89-556 (3)

89-557 (3)

Nos. 89-

FILED
OCT 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF LOUISIANA, *ex rel.* WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

AND

BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

On Appeal from a Three-Judge Panel of the United States District Court for the Eastern District of Louisiana

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JOINT APPENDIX TO JURISDICTIONAL STATEMENT

(Volume II, pp. 533a-1163a)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

UNITED STATES' MEMO IN OPPOSITION TO THE BOARD OF REGENTS' MOTION FOR SUMMARY JUDGMENT

[Filed June 7, 1988]

The United States, plaintiff herein, hereby submits its Motion in Opposition to the Board of Regents' Motion for Summary Judgment.[1]

For the reasons set out in the attached Memorandum in Support of the United States' Opposition to the Board of Regents' Motion for Summary Judgment, the United States' Response to the Board of Regents' Statement of Material Facts, the United States' Motion for Summary

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[1] We should note that the Board of Regents is only one defendant in this case, and its motion does not state that all other defendants, specifically the State, join in the motion.

Judgment, the United States' Memorandum in Support of Motion for Summary Judgment, the United States' List of Material Facts, and in the interest of justice, the United States prays this Court to enter an order denying the Board of Regents' Motion for Summary Judgment.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

MEMORANDUM IN SUPPORT OF THE UNITED STATES' OPPOSITION TO THE BOARD OF REGENTS' MOTION FOR SUMMARY JUDGMENT

The United States, plaintiff herein, hereby submits its Memorandum in Support of the United States' Opposition to the Board of Regents' Motion for Summary Judgment.[1]

ARGUMENT

1. *Liability.* The United States wishes to make two overreaching points in this response. First, in our view the Board of Regents (Board) in its Memorandum in Support of its Motion for Summary Judgment has confessed liability. In the first sentence of its Memorandum, the Board states that "Louisiana once maintained a *de jure* segregated system of public higher education . . . ."

---

[1] The United States hereby incorporates by reference herein its Memorandum in Support of the United States' Motion for Summary Judgment (attached hereto as Attachment A) and the List of Material Facts (attached hereto as Attachment B).

In the second sentence, the Board states that "the racial identifiability of Louisiana's public colleges and universities persists today . . . ." Having described these facts as undisputed, the Board concludes in the third sentence that the instant controversy "revolves around the proper means of achieving a racially integrated system."

The United States agrees with these facts and supports the Board's characterization of the nub issue which will ultimately be before the Court. If it is conceded that the vestiges of past discrimination remain and that a racially integrated system has not yet been achieved, then—for the reasons discussed at pp. 4-11 of our Memorandum in Support of Motion for Summary Judgment—it is clear that the Board's motion must be denied and ours granted, for the Board has conceded that defendants have not met their equal protection obligations.

Our second overreaching point is that, while we do not agree with the Board's evaluation of the actions of the institutions, management boards, legislature, governors, and the Board with respect to the actions to implement the requirements of the 1981 Consent Decree, the United States does agree that the Consent Decree as implemented by the State of Louisiana and its various entities has not achieved the projected results and intended purpose of the Decree. It is the position of the United States, however, that it is the failure of the State of Louisiana to fully and appropriately implement the requirements of the Consent Decree that is to blame for that failure.

Boiled down to its essentials, the Board's position is that this Court should grant it summary judgment because, while the Board has conceded that the State has failed to dismantle its dual system of higher education and fully implement the Consent Decree which the parties agreed would do so, this Court should itself despair of being able to fashion an acceptable remedy for doing so.

This view is epitomized at page 5 of the Board's Memorandum, wherein the Board pleads that "the court should not intervene in this case." This is symptomatic of the Board's misunderstanding of the facts of this litigation, the applicable federal law, and the power and authority of the federal courts. The United States submits that it is hardly at issue whether this Court should "intervene" in this case. The Court has had jurisdiction of this case since 1974 and does not stand in the position of a proposed intervenor, but is the finder of fact and adjudicator of the law. While the Board questions the Court's ability to remedy the admitted liability of the State and then devotes a substantial portion of its Memorandum to a discussion of remedies which the Board alleges have been unsuccessful, the United States submits that a discussion of various remedy concepts is premature and irrelevant at this point. Similarly, the United States further submits that the discussion of specific actions taken or not taken in other circumstances (*viz*, Georgia and Tennessee) and not before this Court is clearly irrelevant here. While the Board may disagree—wrongly, in our view—with the remedy it agreed to implement in the Consent Decree, it is quite fanciful for it to suggest that therefore it can be required to implement *no* remedy and should be absolved of *all* liability.

2. *The United States' Remedy.* The discussion and characterization of the Justice Department's alleged theory of remedy in Section V is at best irrelevant; aside from that, the characterization is also wholly inaccurate. It is irrelevant simply because an evaluation of competing remedies is not before the Court at this time. It is inaccurate for a variety of reasons, discussed below.

The United States wholly disagrees with the Board's characterization of the principal aim of the United States' remedy theory. That aim is in fact nothing more or less than desegregation of the public higher education institu-

tions, thereby creating a unitary system of public higher education devoid of vestiges of the former dual system. Enhancement is but one component of the process of eliminating the vestiges of the former dual system and creating PBIs[2] which are able to compete for students, black and white, on an equal footing with the PWIs.[3] In addition to enhancement, we would note that programs at different institutions can be combined or reallocated in ways to encourage nonminorities to go to PBIs and minorities to go to PWIs—without wholesale institutional merger.[4]

The Board alleges that the United States' theory has been proven not to work and cites the failure of the Consent Decree programs.[5] But, the Board also admits that it has not fully met its requirements under the Consent Decree. In our view, it is that failure which must be blamed for the fact that the dual system remains undismantled.

The Board cites specifically the affidavit of Sharon Beard and the attachments thereto as support for its evaluation that the programs of the Consent Decree did not work. However, a review of Attachment B to Sharon Beard's affidavit indicates that there has been some, albeit insufficient, progress under the Consent Decree,

---

[2] Predominantly Black Institutions.

[3] Predominantly White Institutions.

[4] We also note that, contrary to the Board's suggestion, while the United States has repeatedly indicated that institutional merger is not a remedy which is legally required, we have never indicated that there has ever been any evaluation of the educational soundness or value of institutional merger.

[5] This arguement by the Board is troubling indeed. The Consent Decree was not a "mandate" of the United States, it was a "compromise" which resulted from extensive and vigorous negotiations between all parties, including the Board. The Board joined in the request that the Consent Decree be approved by the Court.

even though it has not been fully implemented. Between 1981 and 1987, for instance, the white student enrollment has increased at each of the PBIs. While the black student enrollment has declined at all but two for the PWIs managed by the Board of Trustees for Colleges and Universities, the black student enrollment has increased—again, albeit insufficiently—at three of the five campuses in the Louisiana State University system. This information can hardly be considered decisive and wholly supportive of the Board's allegation that the process will not work.

The Board also asserts that the United States substitutes the interests of the PBIs for the interests of the students the PBIs serve. This assertion is of course baseless. The touchstone of this litigation has always been the provision of equal educational opportunities to all of the citizens of Louisiana, black and white. But it is also true that the institutions are the conduits for that provision; if the institutions are endowed by the State with equitable resources then the educational opportunities will be better provided—and provided unfettered by the vestiges of the former dual system. Thus, the United States has sought to make all of these institutions of higher education competitive so that equal educational opportunities may be provided to all.

The process and result do not contain any semblance of the illegal separate but equal doctrine. As explained in our Memorandum in Support of Motion for Summary Judgment, the aim is to ensure that attendance chioces by students are made in a truly unfettered fashion, which in turn requires that the State affirmatively remove the effects of past disparities and duality that still serve to discourage nonminorities from attending PBIs and vice versa.[6] The United States avers that

---

[6] The Board's extended discussion of how higher education differs from primary education is curious in light of the fact that we

should the State implement the process properly, with the necessary and appropriate State support, the State will be able to fulfill these obligations.

3. *Constitutionality of the Restoration Act.* The Board's assertions with respect to the constitutionality of the Civil Rights Restoration Act of 1987[7] are likewise wholly without merit. The Board alleges the Restoration Act is unconstitutional because it lacks here a "clearly stated condition" and "germaneness of the condition to federal purposes."

But the Board's own discussion of the first limitation demonstrates that there is no ambiguity in the Board's undertsanding that the Restoration Act extends the coverage of Title VI to all facets of the institution and/or the system of public higher education. Moreover, there is no ambiguity in this respect stemming from the construction of the Restoration Act.[8] It is quite clear what the condition is: the State cannot deny equal protection of the laws in its system of higher education. Not only is this condition clear but, as discussed *supra*, it is also quite clear that the Board concedes it has violated and is violating this condition by continuing to operate a system from which it has failed to eliminate the vestiges of past discrimination.[9]

---

forthrightly agreed in our Motion that the two are subject to different legal standards. What we dispute is the Board's apparent belief that open admissions alone will *ipso facto* remove all discriminatory vestiges.

[7] Hereafter Restoration Act, copy attached as Attachment C.

[8] See Section IV paragraph 2 and Section VI B.

[9] The Board's assertion that it cannot know if it is unlawfully discriminating or not because of the complexities of the law—and that, therefore, the condition lacks suitable definition—proves too much. Of course, many conditions may lead to disputes about law or fact, but that does not make the condition *itself* indefinite. In this case, it is hard to imagine a simpler condition than "don't engage in unlawful discrimination"; morever, however difficult that

The Board's own discussion also defeats its assertion relative to the second limitation. The Board and the applicable federal law recognize and support the power of Congress to fix terms and conditions to the receipt of federal funds. The Board does not dispute that Congress has a valid interest in regulating educational programs for which it provides funds. Congress by virtue of the passage of Title VI expressed its interest in prohibiting the use of federal funds to support discrimination. Quite clearly, it could rationally decide that the whole institution should be covered, since the whole institution benefits.[10] Cf. *Grove City College* v. *Bell*, 465 U.S. 555, 572 (1984) ("Most federal financial assistance has economic ripple effects throughout the aided institution, and it would be difficult, if not impossible, to determine which programs or activities receive such indirect benefits."). It is hard to imagine a condition more germane to federal purposes than that federal monies given to a State not be spent to further racial discrimination in any way.

The Board's characterization of a "consensus" prior to the Restoration Act concerning program specificity,[11] and its discussion of prior federal case law and more specifically Supreme Court decisions with respect to the program specificity requirements of Title VI, are clearly irrelevant. The stated purpose of the passage of the Restoration Act is to *supersede* prior Supreme Court precedent—*i.e.*, *Grove City College* v. *Bell*, 465 U.S. 555 (1984). With the passage of the Restoration Act, the intervening *Grove City* standard has been legislatively superseded and broad application of Title VI as pre-

---

determination would be elsewhere, it is conceded and indisputable here.

[10] By the Board's logic, requiring the entire program not discriminate would not be germane either, if only a *part* of the program received the money.

[11] See Section V of the Restoration Act.

viously administered has been restored.[12] The question is no longer whether or not individual departments or components of educational institutions or higher education systems engaging in prohibited discriminatory conduct receive federal funds, but is now simply whether or not the educational system by itself or through any of its organizational components receives any federal financial assistance. If so, then the discrimination is unlawful.

In civil litigation, "the usual rule [for intervening changes in law] is that federal cases should be decided in accordance with the law existing at the time of the decision," *Goodman* v. *Lukens Steel Co.*, 107 S.Ct. 2617, 2621 (1987); *St. Francis College* v. *Al-Khazaraji*, 107 S.Ct. 2022 (1987). The Restoration Act does not specify an effective date which precludes application of this amendment to pending cases, and the usual admonition to generously construe civil rights statutes strongly militates in favor of adhering to the normal rule to apply the law as it exists at the time of the decision in this action.[13]

4. *Title VI Standing.* Title VI grants the United States authority to bring this action. Title VI of the Civil Rights Act of 1964 provides:

> no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be sub-

---

[12] The Board's assertion that *Grove City* had constitutional as well as statutory underpinnings is untenable, and the Board points to nothing in that opinion to support this view.

[13] This need not mean that expenditures which had already been made permissibly under *Grove* City, but which would have been impermissible under the Restoration Act, are made retroactively unlawful; but it does mean that the State's ongoing failure to dismantle its dual system—which is in this case a continuing violation—will clearly be evaluated more strictly for violations stemming from funds expended after the Restoration Act.

> jected to discrimination under any program or activity receiving Federal financial assistance . . . .
>
> Compliance with any requirement . . . may be effected (1) by the termination of or refusal to grant or to continue assistance . . . or (2) by *any other means authorized by law.* [Emphasis added.]

42 U.S.C. 2000d.

Historically, the State of Louisiana established and maintained a racially dual system of public higher education. The defendants, as recipients of substantial federal financial assistance and in consideration for that assistance, agreed to comply with Title VI and other applicable federal law. In January 1969, the U.S. Department of Health, Education and Welfare (hereinafter HEW) determined that the defendants were not in compliance with Title VI insofar as they operated a racially dual system of public higher education. As required by Title VI, the regulations issued thereunder, and the United States District Court's orders in *Adams* v. *Richardson*, 356 F. Supp. 92 (D.D.C. 1973), *aff'd* 480 F.2d 1159 (D.C. Cir. 1973), HEW sought between 1969 and 1973 to obtain from the defendants a constitutionally acceptable desegregation plan for the statewide system of public higher education. The defendants refused to submit the requested required plan and, in January 1974, HEW referred the matter to the Attorney General with a recommendation that this action be initiated. Consequently, on March 14, 1974, the Attorney General sued the defendants, seeking to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States [14] and Title VI of the Civil Rights Act of 1964, 42 U.S.C. ¶ 2000d *et seq.*

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[14] The United States no longer asserts Fourteenth Amendment claims in this litigation.

The United States contends that the continued maintenance of the State of Lousiana's racially dual system of public higher education is a continuing violation of the State's former *de jure* higher education system. Title VI echoes Congress's national policy and preference for the elimination of racial discrimination in federally financed programs. Moreover, the language contained in Title VI and quoted above—"by any other means authorized by law"—gives the Attorney General authorization to bring lawsuits, at the request of departments, to seek enforcement of the statute's provisions and to require, where appropriate, specific performance of contracts signed pursuant to Title VI.

Through the debates, Congress made it clear that Title VI imposed upon the states an obligation to insure that their agencies and branches complied with Title VI and to bring them into compliance with Title VI. 110 Cong. Rec. 8980, 13, 12, (1964) (Statements of Senator Humphrey and Javits). Congress's sentiments as reflected in the congressional debates made it equally clear that one of the purposes of Title VI was to eliminate the effects of racial discrimination in higher education; indeed, Senator Humphrey's statements emphatically emphasized that Title VI provisions were aimed at higher education. 110 Cong. Rec. 6541 (1964) ("The situation in higher education is also appalling.").

Since the State of Louisiana failed to eliminate the vestiges of its former *de jure* system, and agreed to comply with Title VI, the United States has standing to bring this action under at least two distinct theories: (1) breach of contract (here, the State agreed to comply with Title VI), and (2) statutory enforcement—*i.e.*, stemming from the failure to eliminate discrimination in federally financed programs.[15] The United States also

---

[15] Defendants' purportedly good faith efforts to implement the Consent Decree does not deprive the United States of its right to

has standing in light of the commitments made to it by the Board in the Consent Decree. As discussed and demonstrated in the United States' Motion for Summary Judgment and accompanying pleadings, the defendants have failed to fully implement the Consent Decree provisions. Moreover, the State's Memorandum in Support of the Board's Motion for Summary Judgment clearly states that the Consent Decree has not been fully implemented. The Consent Decree, Part III, Effect of Decree paragraph A states specifically that "This Decree resolves all issues . . . relating to compliance with and enforcement of the Fourteenth Amendment and Title VI." At the very least, then, the United States also has standing to seek enforcement of Title VI through enforcement of the Consent Decree.

In sum, it defies belief that the federal government should lack standing to enforce a federal law prohibiting the expenditure of *its own* money in a discriminatory manner, especially when that law provides that "compliance . . . may be effected . . . by any . . . means authorized by law."

CONCLUSION

For the reasons set out above and in the United States' Response to the Board of Regents' Statement of Material Facts, the United States' Motion for Summary Judgment, the United States' Memorandum in Support of Motion for Summary Judgment, the United States' List of Material Facts, and in the interest of justice, the United States prays this Court to enter an order denying the Board of Regents' Motion for Summary Judgment.

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seek enforcement of Title VI. As stated by Senator Humphrey during the congressional debates concerning Title VI, for example, "token integration" is not enough. 110 Cong. Rec. 6543 (1964).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing United States' Motion in Opposition to the Board of Regents' Motion for Summary Judgment, Memorandum in Support of the United States Opposition to the Board of Regents' Motion for Summary Judgment and United States' Response to the Board of Regents' Statement of Material Facts upon the following counsel by depositing same in DHL Courier Service, prepaid, addressed as follows:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

UNIED STATES' RESPONSE TO THE BOARD OF REGENTS' STATEMENT OF MATERIAL UNDISPUTED FACTS

1. The United States denies this fact. See United States' List of Material Facts Nos. 43, 45, 49 attached to the United States' Motion for Summary Judgment filed on May 13, 1988. The United States submits that there are eleven institutions of public higher education; two of the eleven institutions operate multiple campuses.

2. Admitted.

3. Admitted.

4. Admitted.

5(g)-(q). The dates of establishment of the institutions are admitted. However, with the exception of 5(f) the race of the students to be admitted to the respective institutions has been omitted. Therefore, the United States refers the Court to the List of Material Facts No. 13 attached to the United States' Motion for Summary Judgment.

6. The United States is without readily obtainable information to admit or deny this Fact.

7. Admitted.

8. Admitted.

9(a)-(c) & (e). Admitted.

9(d). To the extent that this Fact purports that the formula provides an equitable distribution of funds among the PWIs and PBIs; it is denied. See Response to No. 18 *infra*.

10. Admitted.

11. Admtted.

12. Admitted.

13. Admitted.

14. The United States is without sufficient readily obtainable information in to admit or deny this Fact.

15. This Fact is admitted except as to classification of SUNO, SUSBO and SU-BR as institutions; the United States submits that they are campuses of the Southern University System.

16. The United States admits that since the effective date of Title VI the State has had an open admissions policy. However, the United States submits that certain institutions were identified in official state publications by the race of their respective student enrollments until 1968. See List of Material Facts No. 29 attached to the United States' Motion for Summary Judgment.

17. Admitted.

18. Admitted except as to the equitable distribution of funds. See the List of Material Facts Nos. 132, 133, 135-142, 145-151 attached to the United States' Motion for Summary Judgment.

19. Admitted except as to the examples provided. See List of Material Facts Nos. provided with respect to prior Fact response above.

20. Admitted.

21. Admitted.

22. The United States admits this Fact to the extent that it is understood and accepted that the calculation of state dollars includes dollars received by the PBIs under the Consent Decree and that the appropriate attachment to Beard Affidavit is Attachment Q.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. The United States is without readily obtainable information to admit or deny the calculations contained in this Fact and the supporting Exhibit 3. Further, the United States submits that this Fact is irrelevant to the issue before the Court and this litigation.

29. Admitted.

30. Admitted.

31(a)-(c)(i), (d)-(g). Admitted.

31(c)(ii). This Fact is admitted to the extent that the defendants admit that the letters included in Attachment C resulted from inquiries by the plaintiff relative to complaints previously provided by the PBIs.

31(h)(i)(1). The United States admits the number of programs approved for implementation at the predominantly black institutions under the Consent Decree and the number of programs not implemented, but prescribed by the Consent Decree. Regarding the submission of the Ph. D. in Accountancy, however, the United States was informed by the lead faculty person for this Consent De-

cree program at Southern University that the program proposal was submitted to the Board of Regents for review and approval in December of 1986, accompanied by a request for a change in the name of the program. The United States denies, therefore, the Fact that the program proposal for the Ph. D. in Accountancy has not been submitted yet for Board of Regents' approval. *See* Attachment A.

31(h)(i)(2). The United States admits that pursuant to Part II., Section Seven (G)(2) of the 1981 Consent Decree the State of Louisiana was required to ensure that Southern University and Grambling State University received appropriations reasonably necessary to fund the requirements of the Consent Decree. Subsection (b) of Section Seven (G)(2) of the 1981 Consent Decree required, moreover, that if the State, following review of the State Appropriation Formula, determined that the projected allocation pursuant to the Formula would not be sufficient to fund the operating needs of Southern University and Grambling State University or to otherwise fund the requirements of this Consent Decree, that the State appropriate funds outside the Formula so as to ensure sufficient funding of these institutions.

The United States admits the Fact that funding outside-the-State formula funding mechanism was recommended for support of Consent Decree programs, but does not admit that funding levels sufficient to satisfy the requirements of the Consent Decree, which provisions are referenced above, were in fact recommended or provided by the State for support of Consent Decree programs.

31(h)(i)(3). The United States admits that the Board of Regents recommended funding outside-the-State formula funding mechanism for Consent Decree programs and that the Regents' recommendations were often lower, and sometimes substantially lower, than the re-

quest of the Governing Boards for predominantly black institutions. The United States is without information to respond to this Fact as it pertains to the "most common disagreements" between the Regents and the predominantly black institutions, but see List of Material Facts Nos. 129, 130 and affidavits of Dr. Clifton Conrad and President Joseph B. Johnson attached to the United States' Motion for Summary Judgment.

31(h)(i)(4). Admitted.

31(h)(i)(5). Admitted.

31(h)(i)(6). Admitted.

31(h)(ii). The United States denies that a total of $34,213,375 has been appropriated and received by the predominantly black institutions. Rather, the United States contends that Attachment K to Beard Affidavit shows that the total funding actually received (cash or Bonds sold) as of November 16, 1987 for the predominantly black institutions is $30,713,375. Moreover, the Board of Regents, Summary of Consent Decree Capital Outlay Funding through September 15, 1987 shows a total of $30,583,875 was received by the predominantly black institutions.

31(h)(iii). The United States is without readily obtainable information, other than that provided herein, to admit or deny this Fact.

31(h)(iv). The United States is without readily obtainable information, other than that provided herein, to admit or deny this Fact.

31(h)(v)(1). The United States is without readily obtainable information to admit or deny the recommendations of the Board of Regents regarding parity funding between the Southern Law School and LSU's Paul M. Hebert Law Center prior to the Consent Decree. The remainder of this Fact is admitted.

31(h)(v)(2). Admitted.

31(h)(v)(3). Admitted.

31(h)(vi). Admitted.

31(i)(i). Admitted.

31(i)(ii). Admitted.

31(i)(iii). The United States is without readily obtainable information, other than that provided herein, to admit or deny what all states have in terms of their higher educational systems or what all states can afford in terms of higher education institutions. Furthermore, the United States submits that the information contained herein is irrelevant to the issue before the Court and to this litigation. The United States denies that the missions of Louisiana's universities "appropriately" recognize different purposes, programs, and emphases for each institution.

31(i)(iv). Admitted.

31(i)(v). The United States admits that the Southern Regional Education Board (SREB) employs a classification system for institutions of higher learning based upon a scheme like that described in 31(i)(iv). Additionally, it is also admitted that the SREB system contains eight categories of institutions and that this Fact correctly defines each category of institution. The United States denies this Fact to the extent that it states that the SREB model is an "appropriate" classification with which to illustrate the distinctions among Louisiana's institutions of higher learning, but admits that it is a classification system, among others, used in higher education.

31(j)(i). The United States is without readily obtainable information to admit or deny this Fact, although we have requested information from the Board of Regents through interrogatories propounded on April

21, 1988, regarding the number of requests to offer new academic programs since 1980 that the Board denied and its reasons for denying each request. This information has not been provided to us as yet by the Regents, but counsel has agreed to supplement the Board's response in order to provide this information to us in the near future.

31(j)(ii) and (iii). The United States is without readily obtainable information to admit or deny the number of academic program reviews conducted by the Board of Regents during the Consent Decree period. The United States has recently obtained information regarding the number of programs discontinued at each institution of higher learning, including the predominantly black institutions, from the Board of Regents in response to interrogatories propounded by the United States. We have not had an opportunity to analyze this information and, consequently, are not in a position to admit or deny these Facts to the extent they reference the number of programs terminated since 1982 at predominantly black institutions.

31(j)(iv). The United States admits that the Board of Regents in its review of existing academic programs has considered whether elimination might disproportionately affect predominantly black institutions. Regarding the Board of Regents' actions in reference to Southern University's undergraduate Engineering and Architecture programs, the Board of Regents on December 18, 1986, accepted the recommendation of its Academic Affairs Committee and voted not to terminate both Southern's Engineering and Architecture programs because to terminate both might violate the requirements of the Consent Decree. The Regents on that same date did vote to terminate the Architecture program at Southern. On March 26, 1987, after an extended appeals process and an address by then Governor Edwin Edwards to the Board of Regents recommending, among other things,

that Southern's Architecture program not be terminated, the Board voted to reverse its decision of December 18, 1986, terminating Southern's Architecture program. The Board, moreover, voted to direct the Board staff to schedule this program for review again during the 1989-90 academic year.

32(a), (c)-(j). Admitted.

32(b). The United States admits that the program was undertaken; however, the implementation of said program was not wholly satisfactory. See Response to Fact 31(c)(ii).

33. Admitted.

34. Admitted.

35. The United States is without readily obtainable information, other than that provided herein, to admit or deny the extent of the alleged declining revenues, the reasons therefore and/or the size of any alleged deficit. Further, the United States submits that the information contained in Fact 35 is irrelevant to the issue before this Court.

36. See Response to No. 35 above.

37. See Response to No. 35.

38. See Response to No. 35.

39. Admitted.

40. The United States is without readily obtainable information, other than that provided herein, to admit or deny this Fact. Further, the United States submits that House Bill 626 is the best evidence.

41. Admitted.

42. Admitted.

43. Admitted.

44. The United States is without readily obtainable information, other than that provided herein, to admit

or deny Fall 1987 overall student enrollment figures for Southern University-Baton Rouge and Southern University-New Orleans Consent Decree initiated academic programs. The United States has recently requested Fall 1987 overall student enrollment figures, as well as the number of majors in each Consent Decree program, from Southern University-Shreveport and Grambling State University. When analysis of this information is complete, the United States will be in a position to respond by admitting or denying this aspect of this Fact.

Included as Attachment B and C to this Response is student enrollment data by Consent Decree program for the 1986-87 academic year, which was submitted to the United States by Southern University-Baton Rouge and Southern University-New Orleans in August of 1987. This information reflects total headcount student enrollment, part-time and full-time, by race for the 1986-87 academic year. Where information was made available regarding the number of actual majors in each program, we have provided this information also.

45. The United States is without readily obtainable information, other than that provided herein, to admit or deny this Fact.

46. See Response to Fact No. 45. Further, the information herein is irrelevant to the extent the State of Louisiana actually operates an open admissions policy with respect to admission to its institutions of higher education.

47. See Response to No. 46.

48. Admitted. Further see Response to No. 46.

49. See Response to No. 48.

50. See Response to No. 48.

51. The United States admits that this is an accurate excerpt from the cited deposition. However, the United

States denies the implied or expressed validity of the statements therein. Further, the United States submits that the information provided therein is irrelevant to the issue before the Court and to this litigation.

52. See Response to No. 51.

53. See Response to No. 45. Further, the United States submits that the information provided therein is irrelevant to the issue before the Court.

54. See Response No. 53. Further, the information provided therein is irrelevant to this litigation except when used to choose between constitutionally acceptable desegregation plans.

55. See Response to No. 54.

56. See Response to No. 54.

57. See Response to No. 51.

58. See Response to No. 51.

59. See Response to No. 51.

60. See Response to No. 51.

61. See Response to No. 51.

62. See Response to No. 51.

63. See Response to No. 51.

64. See Response to No. 51.

65. See Response to No. 51.

66. See Response to No. 51.

67. See Response to No. 51.

68. The United States admits that this is an accurate excerpt from the described Report. However, the United States denies any implied or expressed validity of the statements contained therein. Further, the United States submits that the information provided therein is irrelevant to the issue before the Court and to this litigation.

69. See Response to No. 68.

70. See Response to No. 68.

71. See Response to No. 68.

72. See Response to No. 68.

73. See Response to No. 68.

74. Admitted. Further, the United States submits that information provided herein is irrelevant to the issue before the Court.

75. See Response to No. 74.

76. See Response to No. 74.

78. The United States is without readily obtainable information, other than that provided herein, to admit or deny this Fact. Further, the United States submits that the information contained herein is irrelevant to the issue before the Court and to this litigation.

79. See Response to No. 78.

Respectfully submitted,

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United States Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

MOTION FOR HEARING

[Filed Dec. 31, 1987]

Pursuant to Part V of the 1981 Consent Decree [1] the Southern University Board of Supervisors, a defendant, requests this Court to enter an order maintaining jurisdiction over this litigation, scheduling a hearing in the instant litigation for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis, preserving all privileges, obligations and rights of the parties hereto.

Part V of the 1981 Consent Decree states in pertinent part:

> B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

---

[1] Reference here and hereafter to "Consent Decree refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

The Memorandum in Support of this Motion attached hereto is incorporated herein by reference.

WHEREFORE, the Southern University Board of Supervisors pray that this Court enter an order maintaining jurisdiction over this litigation, and in due course scheduling a hearing for the purpose set forth above and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

/s/ William J. Jefferson
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on all counsel of record properly addressed by depositing same in the United States mail with sufficient postage prepaid on this 31st day of Dec., 1987.

/s/ William J. Jefferson
Attorney of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

MEMORANDUM IN SUPPORT OF MOTION FOR HEARING

Pursuant to Part V of the 1981 Consent Decree,[2] the Southern University Board of Supervisors, Defendant, requests this Court to maintain jurisdiction over this action, scheduling a hearing in due course for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis and preserving all privileges, obligations and rights of the parties hereto.

As grounds for the Motion, the United States avers as follows:

1. Part V of the 1981 Consent Decree states in pertinet part:

> B. If any party, prior to December 31, 1987, has commenced proceedings either to seek compliance with this Decree, or to seek other relief necessarily implicating this Decree, this Court shall retain jurisdiction over this action until all issues relating to such proceedings have been resolved.

---

[2] Reference here and hereafter to "Consent Decree" refers to the 1982 Addendum to Consent Decree as well as the 1981 Consent Decree.

C. On December 31, 1987, this Decree shall terminate automatically and without further formality unless the plaintiff by motion requests this Court to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of this Decree and are operating the system of public higher education on a unitary basis.

2. Although cast as a defendant, the Southern University Board of Supervisors interests are more closely aligned with those of the plaintiff, the United States, in this matter and Southern University was to have been a major beneficiary of enhancement in academic programs and physical facilities.

3. Throughout the life of the 1981 Consent Decree the parties have monitored compliance with the Decree, have regularly complained of the failure of the State and other defendants to comply with the terms of the Consent Decree, and efforts have been made to resolve problems and/or concerns through negotiation.

4. It is the evaluation of, *inter alia*, the defendant that all of the requirements of the Decree have not been fully and completely met. The Consent Decree committed the State and other defendants to enhance predominantly black institutions, and in particular to enhance the institutions of the Southern University System through: (a) strengthening existing academic programs; (b) placing new high demand, high cost programs at Southern; (c) improving its existing capital facilities and constructing new capital facilities, and (d) by increasing financial support to these institutions, among other commitments. In spite of the clear mandates of the decree, its commitment to enhance predominantly black institutions has not been fulfilled, the equal opportunity provisions of the decree have not been met, and the decree has not been otherwise implemented in good faith for these, among other reasons:

i. The defendants have failed to locate all of the new academic programs required by the "Consent Decree" at the various institutions of the Southern University System;

ii. The defendants have not implemented new academic programs in a timely manner, nor in accordance with established State policies and other established policies regarding educational quality;

iii. The defendants have failed to fund the new programs at a level to make them viable and capable of attracting students of all races to Southern University;

iv. The defendants have failed to provide increased financial support as is reasonably necessary to fund the requirements of the "Consent Decree", and to provide inflationary increases as required;

v. The defendants have conducted academic program reviews and recommended program elimination inconsistent with the objective of enhancing predominantly black institutions;

vi. The defendants have not improved Southern's physical plant such that it is comparable to those plants of comparable predominantly white institutions and more than half of the "Consent Decree" capital projects have not been started or completed;

vii. The defendants have failed to meet the racial composition goals for certain of its governing boards;

viii. Equal access goals of the decree are not fulfilled and Southern has been unable to successfully recruit other race students because of the failure of the State to provide other race scholarships, public relations funds to attract other race students, provide access to other race high school students, and other requirements;

ix. The defendants have failed to provide appropriate funding for developmental education programs and student financial assistance programs as required by the decree; and

x. equal employment goals have not been met at Southern because of the defendants' failure to appropriate funds sufficient to attract other race faculty and staff to Southern and to provide an appropriate academic environment.

5. The plaintiff has communicated to the defendants a description of the unfulfilled requirements.

6. The plaintiff has transmitted a proposal to resolve the remaining issues to the defendants.

7. The plaintiff and defendants have initiated negotiations concerning the plaintiff's proposal and to resolve outstanding issues.

WHEREFORE, the Southern University Board of Supervisors requests that this Court, for the reasons set out above and in the interest of justice enter an order maintaining jurisdiction over this action, and providing for the conduct of a hearing as required by Part V, B and C of the Consent Decree, and preserving all privileges, obligations and rights of the parties.

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

ORDER

The Southern University Board of Supervisors, Defendant, having requested that this Court enter an order maintaining jurisdiction over this litigation and enter an order to conduct a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, and to assign a date for such hearing in due course, the same is, for good cause shown, GRANTED.

THEREFORE, jurisdiction over this litigation is maintained, a hearing date will be set in due course to determine a date for the conduct of a hearing for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree and the 1982 Addendum to Consent Decree and are operating the system of public higher education on a unitary basis, such hearing date to be set in this matter pursuant to further orders of the court, and all privileges, obligations, and rights of the parties are hereby preserved.

New Orleans, Louisiana, December —, 1987.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing United States' Motion for Hearing and Memorandum in Support of Motion for Hearing upon the following counsel by transmitting a copy by first class mail, postage prepaid, addressed as follows:

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This the 31st day of December, 1987.

Respectfully Submitted,

/s/ William J. Jefferson
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF LOUISIANA, *et al.*,
Defendants.

MOTION FOR EVIDENTIARY HEARING

[Filed Oct. 19, 1988]

COMES NOW DEFENDANT, Southern University Board of Supervisors, and respectfully requests this court to enter an order scheduling a hearing for the purpose of determining fully whether defendants have fully implemented all provisions of the 1981 Consent Decree as requested by the United States of America and by the Southern University Board of Supervisors in their motions of December 29 and December 31, 1987.

The Memorandum in support of this motion attached hereto is incorporated herein by reference.

WHEREFORE, the Defendant Southern University Board of Supervisors prays that this court enter an order scheduling a hearing for the purpose of setting a hearing date to determine compliance with the 1981 Consent Decree.

Respectfully Submitted,

/s/ William J. Jefferson
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NOTICE

CONSIDERING THE FOREGOING motion and attached memorandum, IT IS ORDERED that an evidentiary hearing be held at the U.S. District Courthouse, 500 Camp Street, Section "A", on the 9th day of November, 1988, at 10:00 a.m. for the purpose of determining whether defendants have fully implemented all provisions of the 1981 Consent Decree.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on all counsel of record properly addressed by depositing same in the United States mail with sufficient postage prepaid on this 19th day of Oct., 1988.

/s/ William J. Jefferson
Attorney of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF LOUISIANA, *et al.*,
Defendants.

MEMORANDUM IN SUPPORT OF A MOTION
FOR AN EVIDENTIARY HEARING

The Consent Decree of 1981 was a proposed remedy to desegregate the Louisiana System of Higher Education. However, in entering into the Consent Decree, no defendant admitted and the court made no determination that there was then existing a violation of the Constitution of the United States, Title VI, or any other governing provision. These determinations, generally termed "liabiilty issues", were decided by this court in its August 2, 1988 ruling. In fact, the "liability issues" were determined by summary judgment motions.

Since the Consent Decree dealt with the "remedy" aspect of this cause, it would appear obviously unconnected to the liability determinations. That a dual system still existed after the ordering of a remedy, does not necessarily shed light on whether the remedy was effective or appropriate. No medicine helps the patient if it is not properly taken, or if it is not taken as required. To find that the patient is still ill following the prescribing of the

perfect but unapplied cure proves nothing about the inherent effectiveness of the cure. But more than this, it is unnecessary to a diagnosis that the patient is ill to inquire about his medicine. Liability and remedy are separate issues and require different proof for evaluation and resolution.

In finding a dual system of higher education existing in the state, the court condemned the Consent Decree. Unfortunately, the Consent Decree was convicted without a trial or a hearing. A determination of the ineffectiveness of the Consent Decree was unnecessary to the finding of liability, but worse, it is not supported by any creditable evidence of record.

The court has badly asserted in its August 2 ruling: that ". . . contrary to the court's earlier expectations, the consent decree as implemented has proved no viable solution. If anything, the consent decree has exacerbated the segregation." at Page 33. Further, the court stated:

> "While, primarily because of the state's recent economic downturn, the state did not spend all the money called for by the consent decree, the state did spend over $200 million towards the consent decree. It is now apparent that the failure was not in spending too little, but rather was in the entire structure of the consent decree." at Page 33.

These conclusory statements suffer from a fatal lack of proof. Were an evidentiary hearing to be held on the implementation of the consent decree, it would be clearly established that the consent decree was never implemented and, absent this predicate, cannot be judged. At such a hearing, defendant Southern University Board of Supervisors would establish that in spite of the consent decree's requirement that Southern's existing academic programs be strengthened that it was cut over $12,000,000 in such programs over the six year term of the consent decree; in spite of its requirement that new academic

programs be funded adequately, less than half of the money needed for such programs was provided and many programs were started late in the life of the consent decree; and in spite of the state's agreement to fund $79 million in capital outlay projcts for the Southern University system's institutions, only $14 million or 18% was funded. This destructive combination of deep cuts, inadequate funding for new programs, and neglected physical plant needs, eroded rather than enhanced the Southern University institutions.

The court generously attributes the state's failure to adequately fund the consent decree's requirements to the state's recent economic downturn. However, during the six year term of the consent decree, the state spent $5,237,539.997.00 on new capital outlay projects, thus making a conscious decision to choose to spend on these projects over consent decree projects. The statement that over $200 million was spent toward the consent decree is also grossly incorrect. An evidentiary hearing on the consent decre would establish that Grambling received around $20,000 over six years in academic programs and $16 million in capital outlay programs, and Southern $45 million in academic programs over six years and $14 million in capital outlay. Considering both capital outlay and academic program funding, the historically black universities received around $95 million.

The court's conclusion that the consent decree "exacerbated the segregation" implies that the consent decree had enhanced the historically black schools to the extent that black students were finding them so attractive as to eschew enrolling in historically white schools in favor of them. An evidentiary hearing will establish the true reason for this phenomenon. An evidentiary hearing would establish that the discriminatory experiences of blacks on many historically white university campuses, documented nationwide, a drop off in blacks attending college in our state as compared to whites better explain

these unfortunate results. In any event, it would make it clear that whatever the cause of apparently increased racial polarization might be, the implementation of the consent decree is not one of them.

The demand for an evidentiary hearing involves more than a search for the truth. It also is a necessary predicate to imposing an appropirate remedy and one more intrusive than the consent decree. See *Milliken v. Bradley*, 438 U.S. 267, 97 S. Ct. 2749, 53 L. Ed 745 (1977), *Austin Independent School District v. United States*, 429 U.S. 990, 97 S.St. 517, 50 L.Ed. 2d 603 (1976); and *Geier v. Dunn*, 337 F. Supp. 573, 581 (M.D. Tenn. 1972).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing United States' Motion for Hearing and Memorandum in Support of Motion for Hearing upon the following counsel by transmitting a copy by first class mail, postage prepaid, addressed as follows:

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This 19th day of October, 1988.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

ORDER & REASONS

[Filed Nov. 18, 1988]

The motion of Southern University Board of Supervisors for an evidentiary hearing was taken under submission without oral argument on the basis of the briefs filed by the parties. The motion is DENIED for the following reasons.

In essence, the motion appears to be an attempt on the part of mover for a rehearing of the matters previously decided by the Court in its Order and Reasons dated August 2, 1988. As the United States' opposition to the motion for a hearing aptly demonstrates, the Court has heretofore found that the State has not implemented *all* provisions of the 1981 decree. Further, as the United States Government's memorandum also points out, many of the matters sought to be made the subject of evidentiary hearing can be obtained and submitted to the Court in the form of requests for admissions or on stipulated facts. All of the other matters addressed in the motion, to the extent relevant to the litigation, can be heard when the Court considers the scope of a final remedial plan.

New Orleans, Louisiana, this 17 day of November, 1988.

/s/ John Minor Wisdom
JUDGE JOHN M. WISDOM

/s/ Charles Schwartz, Jr.
JUDGE CHARLES SCHWARTZ, JR.

/s/ Veronica D. Wicker
JUDGE VERONICA D. WICKER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

OPINION AND ORDER

[Filed Nov. 22. 1988]

This cause was the subject of a status hearing this date which had been fixed for the purpose of determining if the parties could arrive at a consensus plan which would comply with the Court's order of August 2, 1988 and either obviate or expedite the hearing on remedy which will be tried beginning February 15, 1989.

Without, in any manner, determining the appropriate remedy, the Court makes the following observations.

1. As indicated by our order entered herein on November 18 denying the motion of the Southern Board of Supervisors for an evidentiary hearing (to determine fully whether defendants have fully implemented all provisions of the 1981 decree) Southern University's approach seems to be misguided. The Court paraphrases what was implicit in its Auust 2nd opinion: because of the undisputed and utter failure of the 1981 consent decree to eradicate the dual system (as is evidenced by the annual reports submitted to the Court under the decree), a plan that

would essentially mimic the 1981 consent decree—that would basically require the State simply to spend extra money on the four black schools—could show little, if any, likelihood of success in eradicating the illegal, dual racial identifiability and nature of Louisiana's public universities with all deliberate speed required under *Brown II*.

2. The obligations of the State to continue to comply with the remedies in the consent decree has expired, and are no longer in effect. The State of Louisiana has no present obligations with respect to it. "(A)ny available remedies [under the consent decree] necessarily precluded enforcement of the specific monetary obligations under the decree since these obligations ended in 1987 under the decree." Op. Aug. 2, 1988, p. 13. It thus seems wholly unrealistic for any party to rely upon it as a viable remedy.

3. No consensus plan has been proposed.

4. Several plans suggest or have no opposition to vesting the State's supervision over the institutions to a single board as previously suggested by the Court in its August 2, 1988 opinion, Op. p. 344. If some guidance from the Court would be helpful to the parties, we suggest that this would be a good beginning and focal point to fashion a remedy. Moreover, based on the Court's review of the record and its knowledge gained over the years of its experience with this case, it concludes that such a requirement is likely to be a part of any remedy that will be adopted or imposed.

ORDER

Since there is a lack of consensus among the parties, it is apparent that the Court will be required to proceed with its hearing on February 15, 1989 to determine what final remedial plan shall be implemented including whether any or all portions of the proposed plans should be considered. Accordingly, shortly hereafter, the Court will

appoint a Special Master pursuant to Federal Rule of Civil Procedure 53 for the purpose of assisting the Court in ordering a final remedial plan and judgment. *See Gary W. v. State of Louisiana*, 601 F.2d 240 (5th Cir. 1979). His report and recommendations shall be considered during the proceedings beginning February 15, 1989 to determine what remedial plan should be ordered.

By entering this order the Court does not mean to preclude continuing settlement discussions among the parties. Thus, the parties are welcome to submit to the Court and the Special Master for their review and approval a consensus plan which the parties believe complies with the Constitution and this Court's August 2, 1988 Order. However, any such consensus plan shall be submitted on or before February 15, 1989.

New Orleans, Louisiana, this 22nd day of November, 1988.

/s/ John Minor Wisdom
JUDGE JOHN M. WISDOM

/s/ Charles Schwartz, Jr.
JUDGE CHARLES SCHWARTZ, JR.

/s/ Veronica D. Wicker
JUDGE VERONICA D. WICKER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

SOUTHERN UNIVERSITY BOARD OF SUPERVISORS' RESPONSE TO THE SPECIAL MASTERS' RECOMMENDED REMEDIAL PLAN

[Filed May 2, 1989]

Pursuant to the pertinent orders of the Special Master, the Southern University Board of Supervisors hereby submits its comments and recommendations for amendment to the "Special Master's Recommended Remedial Plan" (hereinafter sometimes "Remedial Plan"). This discussion tracks the format of the Special Master's "Final Recommendations" Section of the Remedial Plan, beginning on page 108, restating and amending it.

A. *Single Governing Board Comments*

1. Comments

The Special Master has stated at page 42 of the Remedial Plan that the critical inquiry on the single board question is whether its creation would increase integration of the public institutions—whether it would help to

eliminate their racial identifiability. We disagree. The questions really are two:

(i) Whether there is a preponderance of evidence on the record that the creation of a single governance board will increase integration of the state's colleges? and,

(ii) even assuming that the record establishes that a single goverance board will increase integration, whether its adoption, requiring the elimination of a state's constitutionally mandated governance scheme, is necessary in order to achieve an increase in integration in the state's colleges?

As Southern showed in its post trial memorandum, there is little evidence that a single governance board will increase integration. Except for Dr. McTarnaghan, each witness testifying on the single board question for the State, for the Board of Regents, and for LSU denies that he is an expert in higher education desegregation, in higher education governance, or both. Inasmuch as the testimony of each is offered as expert testimony on the subjects, the testimony is due very little, if any weight. Opposing Dr. McTarnaghan on the desegregation effect of single board governance are Dr. Conrad, Dr. Leslie, Dr. Richardson and Ms. Gade. Further, the history of the lack of success of single board states in the South, including the States of Georgia, Mississippi, and Florida, in achieving integration of higher education is undisputed on the record. Dr. McTarnaghan's self-declartior of a Florida success story on integration on his deposition is belied by his own testimony at trial that only five (5%) percent of the students in Florida's historically white 4-year colleges are black, only 3% of the graduates of Florida's historically white colleges are black, and that the lone historically black 4-year college in the system, Florida A&M University, annually grants better than half of all of the black baccalaureate degrees granted in Florida. He admitted, on cross-examination that Flor-

ida's was not a success story of higher education integration (McTarnaghan, Trail Testimony, pp. ——). His testimony also established that Florida failed several times between 1968 and 1978 to have HEW accept its plan of desegregation for its colleges. It was not until 1978 that Florida was able to produce a plan meeting the minmium requirements of the Revised Criteria, and not until December 1988, ten years later, that Florida was released by HEW (now the U.S. Department of Education) as having substantially complied with the dictates of its plan. Thus, far from a panacea in Florida, its single board took over 20 years to create a constitutionally acceptable plan, and then Florida had significantly more difficulty in achieving an acceptable plan than did certain multi-board states, notably the State of Arkansas. Reliance on Dr. McTarnaghan's testimony then as to the "success" of Florida under its single board is sorely misplaced. Further, that Dr. McTarnaghan did not bring to the attention of the Court and the parties the existence of a well documented study in Florida that chronicles salient difficulties of the State of Florida in educating its black population, raises important new questions about the credibility of Dr. McTarnaghan. (See Attachment)

Southern has demonstrated previously that a single board is not needed in order to increase other-race presence on governance boards and on the state's college campuses. Other, less intrusive alternatives are available. There is no geometric fit between the remedy of a single board and the violation of racially identifiable boards and institutions. Speculation that under a single board funds would be "freed up" . . . . "presumably to aid in the desegregation process" (page 43 of the Remedial Plan); that it is "sensible that efficient decisions might aid in desegregation;" and that while Florida's "success" in achieving desegregation under a single board is "predictive," "but not in any way implausible provides weak

support to dismantle a system of governance adopted in Louisiana only 14 years ago, subsequent to most of the segregative actions of the State of Louisiana. (See page 48 of the Remedial Plan).

The Special Master's conclusion that the "conditions under which the judgment [on the success of a single board] in Louisiana is offered" premised on the argument of the Governor and three of its four boards that a single board will achieve desegregation is erroneous and glosses over reality. Certainly, the Governor has always advocated a single board, but not because he viewed it as a desegregation vehicle. He only came to this view after the opportunity to have a single board ordered by the Court presented itself in the Court's August 2, 1988 ruling. The Board of Regents flatly resolved that a single governance board bore no correlation to the quality of the State's institutions and vigorously opposed the single board concept during the 1988 Regular Session of the Louisiana Legislature at which the Governor's single board proposition failed. The Board of Regents has never reversed itself from that earlier position. It has only allowed that if a single board were essential to achieve a settlement of this litigation, it would agree to its adoption. Representation by counsel to the Regents to this Court to the contrary as inaccurate and misrepresents the facts. The Board of Trustees, as has been shown, merely capitulated to the position of support of the single board concept after political pressure from the Governor's office. (See Attachments to S.U. Remedial Plan). And the LSU Board only agreed to the single board on the condition that it be included as a flagship university in the state's constitution. None of these board positions ever purported to have anything to do with desegregation until very recently in this judicial process. The coerced agreement of the boards to the single board concept indicates more the lack of commitment on the single board issue by these boards, rather than support for the plan.

For the foregoing, and for all the reasons heretofore urged in connection with the issue by Southern University, Southern strenuously objects to the adoption of a single governance board as a desegregation remedy by the Court and its recommendation by the Special Master.

2. *Restatement and Amendment*

Assuming arguendo the establishment of a single governance board, Southern proposes that it be done such that the Court limits as much as possible its intrusion into areas of educational policy and political decision-making. Southern proposes the following:

(1) The four boards currently governing public higher education in Louisiana should be disbanded and their powers consolidated into a single governing board. The new board should be given ultimate authority over academic, budgetary, personnel and administrative affairs of each of the public institutions currently overseen by the Board of Trustees, the Southern Board of Supervisors and the LSU Board of Supervisors. Additionally, the board should be given the special mission of monitoring and implementing the remedial order of the Court and of insuring that progress toward eliminating Louisiana's racially dual education system is achieved. The Legislature shall provide for the name of the new consolidated system of higher education.

(2) The board shall have the number of voting members as provided for by the legislature, which members shall be preferably appointed by the legislature, but in any event, in a manner established by the legislature. The members shall have such terms and such qualifications as may be provided by law, except that such members must at a minimum be firmly committed to the desegregation goals of the Court's order and should be selected to broadly represent the racial and ethnic diversity of the State. An initial board of 17 voting members should

be established immediately, made up of members of the existing boards appointed by the legislature, or should the legislature fail to do so by the Court from among nominees recommended by the existing boards. The LSU Board of Supervisors, the Southern Board of Supervisors, and the Board of Trustees shall have four members each appointed to the initial board, and the Board of Regents shall have five members appointed. The board shall have one student member appointed by the Court recommended by the Louisiana Council of Student Government Presidents. Persons appointed to the initial board may be reappointed under the provisions for appointment of a single governance board as provided by the legislature.

(3) To insure protection for the students attending historically black institutions, a minimum number of black board members should be mandated for an interim period, both for the initial board and for the board subsequently approved by the legislature. While the remedial provisions of the Court's order are being implemented, the mandated minimum of blacks on the board shall over represent the proportion of blacks in Louisiana's population as a whole. A requirement of seven voting black members for the first five years of the board would be appropriate providing the board is a 17 member board or a requirement of no less than the percentage of black representation on the board that the number seven bears to the number seventeen should the number of members on the board be changed by the legislature to a number greater than or less than seventeen. In addition, the board should appoint one student member recommended by the Louisiana Council of Student Body Presidents on an annual basis, who frequentyy should be black. Thereafter, until a constitutionally acceptable level of desegregation is achieved, the number of black members to the board should, at a minimum, should correspond to the proportion of blacks in the state's population. Inasmuch as 44.9% of the public school population in Louisiana

is black, and inasmuch as a connection is envisioned between enlarging opportunities for blacks in higher education through addressing the preparation of black students in the elementary and secondary school programs, it would not be inappropriate, and in fact would be useful to desegregation, for the presence of blacks on the board to exceed the presence of blacks in the population for a period exceeding the referenced five year transition period.

(5) Add at the end of this paragraph the following:

In the event the number of members of an Advisory Committee of a PBI is odd, the black membership may exceed 50% to provide for a black majority.

The procedure adopted for the use of Advisory Committees should insure that they may be both formed and disbanded by the institution involved.

B. *Classification of State Universities*

(3) Delete recommendation of no remedial education courses in doctroral universities, otherwise it would appear that students admitted under "exceptions" may be placed at unreasonably great risk.

Add the following:

Pursuant to one of the goals of granting Southern University and A&M College doctoral status—to increase black terminal degree holders—the governing board shall provide for Southern's doctoral offerings in the fields of science, technology, and math, where there is a severe sparsity of black Ph.D.'s.

The State shall appropriate funds for the start-up of new doctoral programs beginning with the 1989-90 fiscal year which may be carried over in subsequent years as needed for planning and implementation of the doctoral programs. At least $4 million should be allotted for this

purpose initially until more specific proposals can be developed for the new doctoral programs. With this allocation made available, the selected doctoral programs could be implemented without delay.

Southern University and Agricultural and Mechanical College should not have funding for developmental education diminished during the pendency of its adoption of selective admissions and its concomitant move to doctoral status.

C. *Selective Admissions Standards*

Comments

Southern objects to the use of selective admissions standards, but agrees that if such are to be adopted, the Special Master's recommendations are sensitive to the special concerns about minority access to higher education, particularly by placing primary emphasis on high school grades, class rank and breadth of course work undertaken. In the view of Southern, even these standards must be carefully phased-in and carefully monitored to assess their impact on black students. Formal biannual reviews of this impact should be required.

The Special Master's recommendation in C(4) that "the goal is that each campus should have a racial composition roughly approximating the racial composition of the college-going population of the state," sets forth a prescription for failure of the plan of desegregation. The goal, to be achievable and realistic, should be to significantly increase other-race presence on historically white and black campuses, and to improve the college-going rates and college graduation rates of blacks to the point of parity with whites.

The admission exceptions of 10% at SUBR for other-race students is too low, higher exceptions for other-race students may be needed to afford Southern the best opportunity for integration and to insure that the needs of black students are adequately met.

D. *Comprehensive Community College System*

1. Comments

The Florida experience with its community colleges bodes ill for Louisiana's adoption of them as a means to increase post-secondary educational opportunities for its black citizens. Southern strenuously objects to a full fledged community college system as not leading to integration of Louisiana's 4-year colleges and hence not leading to the production of more black baccalaureate degree holders. Moreover, the record is devoid of any evidence of the historical use of community colleges as a part of a desegregation plan. As Dr. Orfield and Dr. Blake have testified most persuasively, the reliance on these colleges as transfer vehicles to increase black college participation has proven a mistake. In some cases, the community college themselves may become integrated, but this case is about integrating the existing colleges and increasing opportunities therein for the historical victims of discrimination. The adoption of a community college system does not address this problem.

The make-up of any community college system established in this State should be left to the Legislature. Issues such as the name of the system and those raised in D(2) are strictly neutral educational policy decisions that a court should not make.

2. *Restatement and Amendment*

Assuming arguendo a community college system, Southern proposes the following:

(1) The two-year community colleges subject to the Court's order (LSU-E, LSU-A, SUSBO and Delgado) should be reorganized as part of a single comprehensive community college system for Louisiana. Bossier Parish Community College shall be incorporated into the system as shall St. Bernard Parish Community College. The

board shall insure that the offerings at Bossier Parish Community College do not adversely affect the opportunity for SUSBO to attract white. Further, the presence of two-year course offerings by Louisiana Tech and Northwestern in Shreveport, reduces the opportunity for SUSBO to increase its white enrollment. Therefore, all such two-year offerings by such four-year schools now offered in Shreveport shall be transferred by the governing board to SUSBO. Further, the admissions standards at LSU-Shreveport and SUSBO should be so differentiated so as to permit a better opportunity for SUSBO to attract white students.

(5) The remaining two year programs at SUNO should be transferred to Delgado. Should the governing board decide that Delgado's offerings do not meet the demand for community college education in New Orleans, then Delgado's two year role should be expanded. Southern University at New Orleans' four-year role should be enhanced as the only four-year open admissions public university in the City of New Orleans for which, given the racial and demographic characteristics of the city, there is a demonstrated need.

(6) The Board should also study the need for and feasibility of starting new community colleges in the areas of the State where none currently exist. Special attention should be given to Baton Rouge where a community college will be needed to service local students not able to be admitted at LSU A&M and Southern University A&M, once both have selective admissions. Additionally, no community college should be made operative in the Baton Rouge area until:

(a) The minimum capital outlay enhancement projects as provided for hereunder for Southern University A&M have been completed; and

(b) Programs in business, mass communication, nursing and public policy have been accredited and reaccred-

ited, during the five year period, and at least three new doctoral programs have admitted students. To do otherwise would place in jeopardy the opportunity for Southern University to attract white students since many may opt to attend the community college and then transfer to one of the predominantly white institutions.

E. *Program Transfer and Enrollment Management*

2. *Restatement and Amendment*

(1) Merging and/or downgrading or closing existing State universities is not recommended at this time. Instead, a system of enrollment management, program review and program transfer should be initiated to address the problem of program duplication and accompanying waste of resources and segregation. The Board should assign the president the mission of reviewing all current course offerings. The president should recommend appropriate enrollment levels for each academic program and also identify programs not meeting minimal quality standards with a view toward their elimination. Where the programs of historically black universities are so reviewed, the president shall ascertain through a careful and thorough study, whether such programs lack traditional quality standards because of reasons based in historic racial discrimination and/or inequitable funding. Where such programs exist due to such reasons, the president should recommend that the programs at a predominantly black institution be strengthened, and his actions should otherwise insure that the elimination of programs at a PBI will not disproportionately adversely affect opportunities for black students or for the attraction of white students.

(2) Add at the end of E (2) the following:

New high demand, high cost, and graduate level academic programs should be considered for placement at the predominantly black institutions first. Predomi-

nantly white institutions will not be permitted to institute any such programs until the predominantly black institutions have been sufficiently enhanced and have ben attracted a sizeable number of white students. Graduate level programs at the predominantly black institutions should not be duplicated at the predominantly white institutions.

(4) LSU Law School and Southern Law School should enter into cooperative agreements providing for students from one school to take courses at the other. To the extent consistent with ABA standards for required course offerings, the board should consider insuring that certain high demand course offerings are not duplicated between the State's two public law schools. LSU must undertake vigorous recruitment efforts to attract black students, including the offering of a substantial number of other-race scholarships. The governing board should establish recruiting and retention plans for black students and recruiting plans for black faculty and administrators to the law school.[1]

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[1] The suggestion (p. 92) for the transfer of Southern students to the LSU Law Center "transfer of some of its black first year students"—is fraught with potential for manifold problems and paradoxical results; for example:

1. The pool of talent in Southern's student body could be significantly diluted.
2. The self-concept and motivation of Southern's students could be lowered.
3. The first-time bar-exam passage rate for Southern graduates could fall.
4. Students choosing to matriculate at Southern may have to be compelled to do so at another.
5. Numerous other technical and real problems involving recruitment, admission, combination, and academic programs at Southern would be generated.

In other words, the "transfer" recommendation presents a real risk that events in the collaborative process could make the unadorned suggestion of the Special Master seem like a prescription for abolishing the Southern Law Center altogether, subject to a

F. *Enhancement of Predominantly Black Institutions*

2. *Restatement and Amendment*

(2) To help guarantee adequate expenditures of enhancement funds, a minimum fixed percentage of the State budget for higher education should be set aside for enhancement of predominantly black institutions. This minimum percentage shall not fluctuate from year-to-year, so as to permit planned expenditures. When increases in State funding are forthcoming, an even greater share should be devoted to enhancement projects.

For enhancement capital projects, more should be undertaken during times of increases to the State's educational budget. The projects so approved by the Board of Regents and recommended by the Executive Branch in any previous or current budget recommendation should be implemented at once. A study to ascertain the need for additional capital outlay enhancement projects should be identified pursuant to a study authorized by the governing board, to be completed within 120 days.

Similarly, approximate amounts for operating expenses for at least the 1989-90 year can be given on the basis of the record as follows:

(a) Appropriation for newly started enhancement programs and for existing enhancement programs in an amount comparable to those approved for the 1988-89 fiscal year.

(b) Dollars for enhancement of existing programs and for accreditation of programs, especially in the areas of engineering, computer science, nursing

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short delay, despite its preeminent role as an example of desegregated legal education.

Additionally, we believe that LSU's Law Center is capable of adjusting its admission process and educational program to desegregate its institution without a compulsory transfer program at Southern.

mass communications, education, architecture, public policy, business and regional accreditation should be appropriated in amounts of $4 to $5 million for each of the next three (3) years.

Those funds are to be appropriated beginning with 1989-90 fiscal year to the universities and made available to them once budgets for their expenditures have been submitted and approved by the governing board and other pertinent authorities with the understanding that only those funds as justified in the budget will be expended.

(3) The Southern University Law Center and the Louisiana State University Law Center should be funded on the same formula basis. Parity monies should be restored by way of the formula to the Southern University Law School.

(4) Southern University as one of two land grant institutions of this State should be appropriated non-formula monies each year for its land grant functions. Such funding has been recommended by the Board of Regents and should be initially be $2.3 million per year, beginning with the 1989-90 year.

G. *Other-Race Recruitment and Retention*

(1) Add at the end of G(1):

Inasmuch as the record demonstrates a greater reluctance on the part of whites to attend predominantly black institutions, a larger sum for scholarships for other-race students should be provided by the State for the first five years, over and above the percentage of the predominantly black institutions' budgets that all institutions will have to commit.

H. *Other Comments and Recommendations*

Southern does not agree with the interim procedures part of the "Remedial Plan" which is vague and seems

fraught with the opportunity for delay. There must be guarantees of adequate funding of predominantly black institutions during any transition period. And the predominantly black institutions must have special protection against future cuts that negate enhancements. Further, the suggestion of a five year period to review progress under the plan is unrealistic since the moves to selective admissions, enhancements, community colleges, and doctoral ungradings will take up most if not all of that period. A period of years beyond that must necessarily be involved to give the plan a fair test.

A Southern University System comprised of Southern University and Agriculture and Mechanical College (including Cooperative Extension and Agriculture programs, such as the Center for Small Farm Research) at Baton Rouge as the lead institution, Southern University at New Orleans and the Southern University Law Center should continue to operate as a system of institutions, since these institutions share resources in finances and computer database. This appears contemplated by the graphic presentation of the new system, but deserves clarification.

We respectfully urge the Special Master's consideration of these amendments.

Respectfully Submitted,

/s/ William J. Jefferson
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States mail, properly addressed and postage prepaid on this 2nd day of May, 1989.

/s/ William J. Jefferson
WILLIAM J. JEFFERSON, ESQ.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

UNITED STATES' RESPONSE TO THE SPECIAL MASTER'S RECOMMENDED REMEDIAL PLAN

Pursuant to the Special Master's Minute Entry of April 18, 1989, the United States, plaintiff herein, respectfully submits its response and proposed amendments to the Special Master's Recommended Remedial Plan filed on April 18, 1989.

INTRODUCTION

The United States has serious concerns about the sufficiency of the Special Masters' Recommended Remedial Plan (hereafter "Remedial Plan"), and accordingly we raise specific objections and offer suggested amendments to certain provisions of the Remedial Plan.

Our principal objection to the Remedial Plan is that it is not specific enough and therefore cannot be adopted as a plan that "promises realistically to work, and promises realistically to work *now*." [1] In most respects we

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[1] See *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 439 (1968) (emphasis in original).

agree with the general *outline* of the plan—that there should be reclassification of the various universities, program transfers, enhancement of PBIs, and so forth—but we believe it is also critical for the plan to *fill in* this outline with specific requirements. Indeed, we would suggest that it is in this "filling-in" function that the Special Master can make the greatest contribution to this case: the Special Master has a familiarity with the witness testimony and expertise that makes it easier for him to undertake this task than the court (which, after all, could have drawn up an outline on its own), and the Special Master has an objectively and constitutional duty which will distinguish it from any new board, however, distinguished. Moreover, without clear, particularized requirements, we fear this lawsuit will drag on literally into the next century. This will disserve the mandated aim of immediate desegregation and will also postpone the day when the administration of the State's higher education system will be the business of the State's educators—not its lawyers, the United States' lawyers, and this Court. The United States hopes that that day would be achieved no more than five years from now, but that will be impossible if a detailed plan is not adopted immediately.

It is in our view especially important that the Special Master and the Court adopt a plan that promises to work *now* in light of the long and protracted history of this case. This litigation originated from a determination by the Department of Health, Education and Welfare (HEW) in 1969 that the State of Louisiana was operating a system of public higher education that was not in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Pursuant to a referral from HEW, the Attorney General initiated suit against the State in 1974, and following extensive discovery the parties entered into a consent decree in 1981. During the six year period between September 1981 to December

1987, the State failed fully to implement this decree, and in August 1988 this Court determined that the State had failed to achieve the desired goal of eradicating all vestiges of Louisiana's former racially dual system of higher education. The parties engaged in extensive settlement negotiations—which included active participation by the Governor—between October 1987 and March 1989, but these efforts were unsuccessful. Between August 1988 and March 1989, the parties again engaged in extensive discovery in preparing for a remedial trial, which was held on March 13-15, 1989.

The Special Master issued his Recommended Remedial Plan on April 18, 1989. That plan relies heavily upon a suggested new single governing board to develop and implement a final plan. It provides, in part, that the new board should be "assembled as expeditiously as possible," and that if "board members have not been appointed and confirmed within three months after the Court's order, the Governor should be required to report back to the Court, explaining the delay and proposing a timetable for completing the board selection process." The Remedial Plan states that the board "should assume responsibility for managing the state university system as soon as it is able to appoint a system president . . . ."

Thus, the manner in which of the State of Louisiana must implement a desegregation plan has been at issue for 20 years, but the Remedial Plan suggested by the Special Master does not offer specific recommendations which show promise of bringing this litigation to termination and leaves open numerous issues and questions for the new board to resolve. Instead, the Remedial Plan requires that the new single board be assembled "as expeditously as possible." In light of the protracted history of this case and the reasonable and available means to ensure that a final remedial plan will be developed and implemented immediately, we believe that the Special Master's Remedial Plan is not constitutionally accepta-

ble. The Plan seems to assume that the possibility of some step being taken in the interim that the new board may ultimately question justifies there being *no steps* taken during the interim; we disagree. In all events, if the Plan spells out, as we think it must, the steps to be taken, the danger of a "misstep" in the interim evaporates. The time has come for a plan which "promises realistically to work and promises realistically to work now"; the time for "all deliberate speed" has long since passed.

The failure of the Remedial Plan to mandate specific actions in several key areas—thereby making the plan vague and leaving the critical issues for resolution by the new single board later—ensures that there will be further litigation.[2] To give just one exmple: the Remedial Plan leaves to the new board the discretion to determine which programs will be transferred between the two institutions in Baton Rouge. Officials at these two institutions have vigorously disagreed on the issue of whether program transfer is a workable desegregation approach, and the State—including the Governor—has also vigorously contested whether this approach is workable and sound. In spite of this clear history, the Remedial Plan leaves open the question of what programmatic approach —program transfer, cooperative efforts, or exclusive program assignment—will be used to desegregate the Baton Rouge area. We believe this is tantamount to leaving this area to future litigation. There is no legitimate reason why this issue, and others as discussed below, cannot be resolved now. Indeed, Grambling and Louisiana Tech

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[2] Establishment of a single board cannot be viewed as a terminal step in this case. The Court will continue to have jurisdiction of this case and the decisions of the single board will be reviewable to ensure that they are consistent with applicable orders. Thus, each time the single board recommends an approach to an issue left open by the Remedial Plan, the potential for further litigation will be great—particularly in light of the controversial nature of this case and its protracted history.

have clearly demonstrated that a cooperative spirit and hard work yields results. They have shown that the duplication issues *can* be addressed now. Therefore, the Remedial Plan should be specific in this area, and since the institutions (excluding Grambling and Louisiana Tech) involved and the State have failed and refused to offer a workable approach, we believe the Special Master—or the Court—should make specific findings on what must be done.

Below we discuss particular provisions of the Remedial Plan. For some provisions discussed we raise specific concerns that justify rejecting or modifying the provision, and where a provision can be modified we offer amendments or modifications.

A. SINGLE BOARD

1. *Concerns and Reasons for Modifying*

While correctly acknowledging that the single board is not a panacea to desegregation, the plan not only embraces the scheme but exalts the single board as its centerpiece. Most troubling is the fact that all decisions concerning other provisions of the plan are held in abeyance pending the establishment of the single board. (Plan, at pages 107-108, 111-123). There is no compelling reason for such a delay in implementation of the plan. This delay is not only inconsistent with the Court's directive concerning plan development, but also ensures that there will be no specific final plan until the single board completes its evaluation process, thus placing the parties and the Court in the same positions in which they stood in November, 1988—reviewing and evaluating the desegregation proposal filed by the parties. The only difference here would be that a single proposal, that of the single board, would be before the Court. In view of the fact that there have been serious disagreements among the State, the two predominantly black institutions, and the United States, it is unreasonable to expect that the single

board will develop and offer specific proposals that will be accepted by all parties. Consequently, the vagueness of the Remedial Plan—and delegation to the new board to make the hard decisions that must be made—ensures that further litigation will occur.

We remain skeptical that the record in this case can support the finding that a single board is warranted or that it will enhance desegregation. We will not, however, reargue the facts and law on this issue in light of the Special Master's Minute Entry. In all events, we adhere to our position that we do not object to the creation of a single board if the Master and the Court conclude that the multi-board system is a vestige of past discrimination or that it is impeding successful desegregation. Our position remains that a single board can be an appropriate education decision by state officials provided it is a part of a comprehensive desegregation plan. What is not acceptable is the Remedial Plan's proposal that the single board be given the carte blanche discretion to resolve numerous key issues and therefore, in effect, to prepare the comprehensive desegregation plan itself.

The presumption that the creation of such a board is itself sufficient to ensure elimination of the vestiges of segregation in Louisiana's higher education system is without support in the record of this case and is without factual corroboration in the annals of higher education desegregation. The grounds cited for support of the proposal to establish the single board do not survive close scrutiny.

First, it is suggested that a single board is likely to be more efficient than the current governance structure and may lead, therefore, to reducing the extensive program duplication and "freeing up" funds to aid in the desegregation process. References to efficiency are of course appealing, especially when the State seems to be short of money, but there is little reason to hope that the single board will lead to substantial economies. Nor is there

evidence that single board states *per se* are any more successful than multi-board states in reducing the program duplication that perpetuates segregation. There is, in particular, nothing in the record of this case indicating that any state has employed the single board concept as a means of remedying a constitutional violation.

Second, it is suggested that "factionalism and rivalries produced by the present organizational structure make it difficult to concentrate attention upon goals of either desegregation or efficiency" (Plan, page 43) and it is implied that the single board structure will somehow not be susceptible to such pressures. Again, however, there is no basis for such an implication. See Testimony of Governor Roemer (Feb. 23, 1989 deposition), (at page 85 line 10-page 88 line 4). Testimony of Dr. Kerry Davidson (Feb. 10, 1989 deposition), (at page 97 line 24-page 99 line 12; *id.* at page 102 line 9-page 103 line 19; *id.* at page 109 line 23-page 110 line 5).

Finally, it is suggested that "those opposing the single board solution are forced to argue that structure of higher education is irrelevant to the goals of desegregation. That is not an easy proposition to sustain." (Plan, page 47). But the position of the United States is simply that there are no compelling reasons nor is there any evidence to suggest that a single board structure is necessarily superior to a multi-board or decenrtalized governance structure in advancing desegregation—and that therefore the creation of a single board does not diminish the need for the other necessary specifics of a desegregation plan. The record, including the testimony of each witness supporting the single board structure, is devoid of any factual evidence in which a single board has been established as a mechanism to advance higher education desegregation. Thus, for example, the Special Master recognized that Dr. McTarnaghan's testimony on the benefits of a single board related "more to efficiency than the question of desegregation" (pages 47-48).

2. *Amendments and Modifications*

a. In view of the fact that there currently exists four boards whose members were appointed under the State's constitutional process, the Special Master should himself review the backgrounds and qualifications of the members of the current boards and designate 17 members who would constitute the new single board. In addition, the Special Master should determine the initial term of service for each member, with each having a 3, 4, or 5 year term. Upon the expiration of each member's term, the vacancy shall be filled by appointment of the Governor with confirmation by the State Senate. The new board, as proposed herein, should determine the manner in which the student member is chosen and his or her term of service. By selecting the board members the Special Master can address all of the concerns discussed in the Remedial Plan—*e.g.*, ensuring that the board is desegregated and that its members will be able to implement the final plan approved by the Court.[3] We believe that this approach is justified in light of the evidence in the record which clearly shows that the appointments of the members to the curent boards occurred in a racially discriminatory manner.

The single board shall then immediately begin the process of advertising the position of president. The process shall be completed and the position shall be filled not later than one year from the entry of the Court's plan. In the interim, the present Commission of Higher Education shall serve as Interim President and shall administer the system consistent with the goals of the Court's plan.

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[3] We will not reiterate our objections to a racial quota for the board's composition, except to point out that the assertion that "there is no effective race—neutral alternative" (Remedial Plan, page 56) is at odds with the recognition that "[t]here are, of course, other assurances that the single board will not work to the disadvantage of historically black institutions or concerns" (Remedial Plan, page 58). The same is true for the campus advisory committees.

b. In light of the protracted process followed in arriving at this plan and the need to ensure that this litigation someday reaches a termination point, the board should not be authorized to make any changes to this plan unless approved under the following process:

i. Any proposed change or modification shall be described in writing. As part of the description of the proposed change, the board shall provide a full explanation of how the change would impact on the implementation of the Remedial Plan.

ii. The board shall provide a copy of the above-mentioned written description of the change to all parties at least 60 days prior to the proposed implementation date.

iii. All parties shall advise the board in writing of their position on the change. If any objections are filed, the objecting party(ies) shall meet with the board in an effort to resolve any disputes amicably. If an amicable resolution cannot be reached, then the Court shall be apprised of the matter and shall conduct a conference, and subsequently a hearing if necessary, in order to resolve the issue.

iv. No change shall be implemented without court approval.

c. Additionally, a special vice-president for desegregation compliance should be selected by the president of the board; and appointed by the board. The vice-president for desegregation compliance shall be an individual possessing knowledge of and experience with higher education desegregation, whose mission is to oversee the implementation of the Court's plan. The vice-president for desegregation compliance shall be responsible for reporting and providing information to the Monitoring Committee at the committee's request. In any event, an annual report shall be submitted to the Monitoring Committee, the parties to this litigation, and the Court.

B. CLASSIFICATION OF STATE UNIVERSITIES[4]

1. Regarding paragraph (1), the board shall implement the scheme described below for classifying each state university according to its mission, graduate and research programs, and degree of selectivity in admissions. Such classifications are aimed specifically at differentiating the missions and academic programs of proximate PWIs and PBIs but also at differentiating the missions and academic programs of institutions placed in the same classification tier. In no event shall the board exceed 90 days in the development of such differentiated missions and academic program schemes. Said differentiated missions and academic program schemes should be submitted to the Monitoring Committee, the Court, and the parties prior to implementation.

2. Regarding paragraph (3), the new board shall be responsible for developing a realistic timetable for phasing in selective admissions criteria at SUBR, with imposition of selective admissions criteria not to exceed three years from the imposition of selective admissions criteria at the other doctoral institutions.

3. Regarding paragraph (4), the new board shall within 60 days set exact graduate missions and admissions criteria for these institutions. Care should be taken to ensure that at least some of these institutions, as appropriate, move away from open admissions toward some degree of selectivity, but less selective than the criteria imposed at the doctoral institutions.

C. SELECTIVE ADMISSIONS STANDARDS

1. Regarding paragraph (2), the precise formulation of the criteria for each institution shall be developed

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[4] The amendments/modifications described herein are to be considered in conjunction with the Special Master's Plan and not as replacements therefor. The numbers indicate the paragraphs in the Final Recommendation Section of the Plan as set forth by the Special Master.

within 90 days of the entry of the Court's plan and shall be forwarded to the Monitoring Committee, the parties and the Court prior to implementation.

2. Regarding paragraph (3), the new board shall develop appropriate programs of high school coursework that will be required for admission at each institution. The programs of high school coursework shall be developed within 180 days of the entry of the Court's plan and shall be developed in consultation with the Board of Elementary and Secondary Education, which shall ensure that sufficient resources are in place within one year to meet the demand.

3. Regarding paragraph (2) and (4), the United States believes it will be a grave mistake to require any university in the system to admit students solely because of race which the university legitimately believes to be less qualified than its other students. Not only does this undermine the purpose of classifying the universities and promulgating selection criteria and (see Remedial Plan, page 71 n.18), it will disserve the students who are supposedly the beneficiaries of this preference. Thus, we join Southern University in opposing the use of race-based "exceptions." See Plan, page 29.[5] Similarly, while we agree that standardized test scores must be used carefully, we do not think that their use—or the use of any selection device—should be forbidden simply because it has a disparate impact on a racial group. Their use should be permitted so long as the State can show that it legitimately serves to predict students' future performance, and so long as there is no showing that alternative selection criteria would have the same or better predictive validity with less disparate impact. In our current appeal in the Mississippi higher education case (*Ayers* v. *Allain*,

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[5] See also T. Sowell, *Education Assumption Versus History* 130-152 (1986). Where schools and students are "mismatched," the result is high failure rates, stigmatization, and resentment.

5th Cir. No. 88-4103 pending), for instance, we oppose the State's use of the ACT as the sole admission criterion, because the test designers themselves said that the use of the test in conjunction with high school grades would *better* predict college performance (and with less disparate impact). A preordained "mix" of students is not required for desegregation in the primary and secondary let alone the higher, education context. See *e.g.*, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26 (1971), and what a university may voluntarily decide to do in the name of "diversity" is quite different from what it is within a court's power to order the university to do. Of course, where the ACT is not a valid predictor, alternative selection means should be available to all students. To say that the ACT must "be employed in a positive rather than a negative fashion" is unrealistic: the "positive" effect of its use—or nonuse—for one student is always "negative" for another.

D. COMMUNITY COLLEGES

This section should be amended in three ways. First, in light of the experience the State already has in operating community colleges, the presidents of the present community colleges shall be directed to meet and develop articulation agreements which shall be submitted to the new board within thirty (30) days after a final plan is approved by the Court. Second, each articulation agreement shall include, among other appropriate provisions, a provision which allows automatic transfer to any four-year institution for students enrolled in any community college who obtain an associate degree with a cumulative G.P.A. of 2.7 (on a 4.00 scale) in required academic courses and have at least three recommendations from instructors recommending that the student attend a four-year institution. Third, in light of several factors we believe that the final plan should require that SUNO be enhanced and made a quality institution to serve as the

comprehensive four-year institution in the New Orleans area. Failure to do this may negatively impact on the effective implementation of a final plan. For example, the University of New Orleans (UNO) will become a doctoral institution with selective admissions and Delgado will offer only two-year programs. Thus, without having a quality comprehensive institution in New Orleans there will be a void in the availability of higher education—*i.e.*, an institution to serve students who do not qualify for UNO and those who do not wish to attend a two-year institution.

E. PROGRAM TRANSFER AND ENROLLMENT MANAGEMENT

1. Under paragraph (1), the following shall be inserted after the second sentence: The program transfers and exclusive program assignments which are common to the State's initial plan, the United States' amended plan, and the Southern University amended plan, along with those contained in Appendix B, shall be implemented with the commencement of the 1989-90 school year. As of the commencement of the 1989-90 school year, seniors and juniors enrolled in the transferred programs at the sending institution shall be allowed to continue until graduation of their respective classes. Freshman and sophomores shall be provided automatic admission to the receiving institution, and all grades and credits acquired at the sending institution shall be accorded full recognition at the receiving institution. Any students wishing to transfer to any other public instituton shall be accepted on the same basis and through the same procedures as any other transfer applicant.

2. Regarding paragraph (3), it should be specified that the board shall assign the president the mission of reviewing all current course offerings and that he will, as appropriate, develop additional program transfers and exclusive assignments of present and future high demand

programs consistent with the aims of the Court's plan. Such additional program transfers and exclusive assignments of high demand programs shall be developed not later than the end of the first semester of the 1990-91 school year and submitted to the Monitoring Committee, the parties, and the Court prior to implementation.

3. Regarding paragraph (4), it should be specific that LSU Law School and Southern University Law School shall enter into cooperative agreements providing for voluntary transfer of students consistent with the goals of the Court's plan. Transferring students' grades and credits shall be accorded full recognition and acceptance at the receiving institution. A cooperative agreement shall be developed providing for cross-registration between the two schools and for sharing of courses and team instruction. Additionally, LSU Law School shall develop and implement a comprehensive, detailed, and rigorous plan to increase other-race enrollment. The cooperative agreements shall be developed within ninety days of the entry of the Court's plan. The recruitment plan shall also be developed within 90 days of the entry of the Court's plan and shall be submitted to the Monitoring Committee and the parties prior to implementation. Each law school shall continue to offer a full complement of the basic courses required for graduation and consistent with eligibility to sit for the state bar examination. As we said in Part C, *supra*, the State should not be required to admit students based on race rather than merit. We note here that the Remedial Plan (at page 91) states that "LSU's Law's low percentage of blacks seems to be a function of an admissions policy that makes no effort to attract black applicants"; accordingly, what is needed is not a lowering of admission standards or a policy of "exceptions", but more vigorous efforts to attract black applicants and transfer in the first place.

F. ENHANCEMENT OF PBIs

This issue was the principal stumbling block preventing settlement of this lawsuit. Accordingly, the resolution of the precise level of funding must be ensured by the Remedial Plan, and the following should be inserted at the end of paragraph (1): The PBIs shall within ninety days of the entry of the Court's plan submit to the Court and the parties a list of *justified* enhancement projects separated into two categories, program and capital outlay. The lists shall be itemized, prioritized, include cost estimations, projected timetables, and an explanation of how the project will assist in reaching the goals of the Court's plan. The parties shall within sixty days file their respective comments concerning the enhancement lists and the Court, if deemed appropriate, shall schedule a hearing to receive additional comments. Thereafter, the Court shall enter an order specifying acceptable enhancement projects and scheduling the completion of said projects.

G. OTHE RACE RECRUITMENT AND RETENTION

1. A final paragraph should be added: Funding for the preceding programs designed to recruit and retain students of other races shall be provided by the State in addition to normal or regularly funding and shall not be subject to budget cutting or austerity programs.

2. In addition, paragraph (6) should be deleted. The approach set out in that paragraph will ensure a powerful incentive to discriminate against black students and in favor of white students who wish to attend PBIs, and against white students and in favor of black students who wish to attend PWIs. As discussed in Part C., *supra*, all admissions should be based on merit, not race. The contrary approach is not required by law (see *Swann*, *supra*), nor is it sound policy. An additional irony is that this will disproportionately advantage the PWIs to

the detriment of the PBIs, since it will almost certainly be easier to the former to attract other-race students than the latter.

H. EQUAL EMPLOYMENT

The Special Master's Plan does not appear to include requirements that the State of Louisiana implement any action to remedy the obvious racial identifiability of the administrative and faulty staffs at the institutions. The Special Master recognizes the need for desegregated staffs (Plan page 99), but fails to require the State, the single board, or any other State entity to employ any strategies or actions designed to create desegregated faculties and administrative staffs. The United States submits that, at a minimum, the final recommended plan should include the equal employment actions described in Section C—Equal Employment Opportunity (pages 20, 23-25) of the United States' plan filed on January 23, 1989.

I. MONITORING COMMITTEE

Paragraph (1) should require that a five-member committee shall be appointed by the Court to monitor progress toward desegregation. Names of experienced persons unconnected with the instant litigation and not previously or currently employed by any Louisiana state entity and reflecting a balanced and responsible view of the desegregation process shall be submitted by the parties for the Court's review. The names of prospective Monitoring Committee members shall be submitted not later than sixty days after the entry of the Court's plan.

CONCLUSION

The recommendation of an amendment to a section of the Special Master's Recommended Plan or the lack thereof does not constitute agreement with or approval of any section of the plan. The United States specifically re-

serves the right to object to the Court regarding any portion of the Special Master's Recommended Plan. More specifically, we recommend that the Special Master adopt the suggestions the United States has offered herein, and that the Special Master take 45 additional days to finalize the Remedial Plan, consistent with our suggestions and comments.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

v.

STATE OF LOUISIANA, *et al.*,

PROPOSED AMENDMENTS TO RECOMMENDED REMEDIAL PLAN

NOW COMES the GRAMBLING STATE UNIVERSITY ALUMNI ASSOCIATION (GSUAA), through its counsel, THOMAS N. TODD, and offers the following amendments to the Special Master's Recommended Remedial Plan:

AMENDMENT I

GRAMBLING STATE UNIVERSITY SHOULD BE ALLOWED TO CONTINUE TO OFFER DOCTORAL DEGREE IN DEVELOPMENT EDUCATION

1. At Page 64, of the Special Master's Recommended Remedial Plan, footnote 12, there is a discussion of whether GRAMBLING STATE UNIVERSITY, (GRAMBLING), as a proposed Comprehensive University, should retain its doctoral degree in Developmental Education. This "anomaly", as it is described, with respect to GRAMBLING and other non-doctoral institutions, should be studied by the new Board.

2. While we understand that there is a desire to keep the integrity of the newly proposed tier system, so that universities can be clearly identifiable, however, it is submitted that each case must be taken on its own merit.

3. The Doctoral Degree in Developmental Education at GRAMBLING is not simply a "doctoral degree". It is the "centerpiece" of a *unique* experiment carried out at GRAMBLING, which has a demonstrable quantity of qualitative success. First, the degree of offering must be put in context. GRAMBLING has one of three (3) Master's programs in Developmental Education in the nation. Secondly, GRAMBLING offers the *only* Doctoral Degree in Developmental Education in the *nation*.

4. Even a cursory examination of the proposed remedial plan herein, an examination of the record in this case, and an examination of general trends in education throughout the nation, will disclose that some type of remedial education is an absolute requirement for many of *our* students, if they are going to have a chance at success. Since remedial education is so important, (in this plan a major role of the newly created comprehensive community college system), *WHERE WILL THE TEACHERS LEARN TO TEACH WHAT THESE STUDENTS NEED TO LEARN*? The answer in Louisiana, and for other parts of the country, is at Louisiana's "national" university, GRAMBLING. Because of this uniqueness, GRAMBLING's remedial education program is not just remedial education, it is much, much more. This is innovative, pioneering education, with an eye on the future of Higher Education in America. One would expect no less from a "national" university. Let's look at the program. The remedial program at GRAMBLING is biforcated:

a. It provides needed help to students at GRAMBLING who because of certain academic deficiences require

its services. To this end, it has been tremendously successful. (See attached documents A and B)*.

b. The students who need remedial education provide the laboratory or practicum experience for our graduate students pursuing their Master's and Doctoral Degrees respectively.

No other university in Louisiana, nor in the nation has tihs unique arrangement. Further, based on the record in this case, using this approach, GRAMBLING graduates a high number of what are considered "high risk students" given little chance of graduating. (See Caillier Testimony, TR p. 91; Recommended Remedial Plan, p. 15).

5. This accomplishment of GRAMBLING is even more impressive when we look at Wharton's Testimony. As the former Chancellor of LSU-BR campus, he testified that when Black students with GPA averages of about 2.5 and ACT scores of about 11-13, about the average for students at GRAMBLING, were admitted to LSU-BR, (the "flagship"), the graduation rate for those students was about 18%. (Wharton Testimony, TR p. 118). Further, he admitted that LSU-BR "was unsuccessful" in graduating high numbers of these students. (Wharton Testimony, TR p. 190). This, as much as anything else, underscores the significance of the work being done at GRAMBLING with students who need "extra help".

6. Since, one of the things being sought here is uniqueness of roles, scopes and missions to prevent duplication, how could GRAMBLING be more unique than it is now? Here is a program in *place*, *functioning* and *succeeding*. There is an old saying some of us are fond of using, I offer it here only because of its profound simplicity and complete appropriateness, *"If it ain't broke, don't fix it"*.

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* The attached documents are submitted for purposes of illustrations and for information only.

Therefore, the GSUAA urges that the *Recommended Remedial Plan* herein be amended to provide for a specific exemption to allow GRAMBLING, a comprehensive university, with open admissions, to continue to offer the doctoral degree in Developmental Education. There really is no need for further study by the Board or anyone else in this matter. The record is clear! The program works!

AMENDMENT II

1981 CONSENT DECREE PROGRAMS

1. The *Proposed Remedial Plan* herein makes no provision for funding programs established at the PBI's under the 1981 Consent Decree.

2. The omission is particularly puzzling, since the Special Master notes specifically the success of some of those programs in Lincoln Parish. (Recommended Remedial Plan, p. 95). For the plan not to provide for interim funding for these programs is to sentence them to *failure.* Consequently, work done successfully over the last seven (7) years would be lost. This would indeed be a waste of resources.

The GSUAA urges that the Remedial Plan be amended to provide for interim funding for 1981 Consent Decree programs, at least until the new single Board adopts a statewide remedial plan, or in the alternative, to provide direction for the PBI's as to what should be done with those programs.

AMENDMENT III

ENHANCEMENT OF PBI'S

1. The Recommended Remedial Plan provides for the enhancement of the PBI's by providing that, ". . . a fixed percentage of the State's Budget should be set aside for PBI enhancement", (P. 119). It is urged here that a specific percentage be provided for in the plan, both as to the State's budget and increased revenues for enhance-

ment of PBI's. Based on past experience in Louisiana, words like "substantial", "adequate", "guarantee" are too vague to protect the PBI's. To insure full compliance by the State, the percentages must be *spelled* out *with* the greatest amount of clarity and specificity. Anything short of that leaves the PBI's vulnerable to forces and influences within the State which do not have their best interest at heart. To further protect the PBI's, we urge that a court approved mechanism or device be established to deliver these funds to the PBIs. Wide discretion, in either how much the PBI's receive, or *how* they receive it, opens the door to a variety of mischief. The less the discretion, on the part of the State, in this area, the greater the likelihood of success.

AMENDMENT IV

MONITORING COMMITTEE

The GSUAA urges that the Monitoring Committee be increased from 3 to 5 members with proportionate Black representation. None of the members should have any association with the parties to this litigation.

The court should set, at a bear minimum, the parameters of the Monitoring Committee, its powers and its sphere of operation. This Committee should be an arm of the Court and not subjected to influence or control by any *state* entity.

WHEREFORE, the aforementioned reasons, we submit that the Recommended Remedial Plan should be amended as stated herein.

Respectfully submitted,

/s/ Thomas N. Todd
THOMAS N. TODD
Attorney for Grambling State
University Alumni Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing PROPOSED AMENDMENTS TO RECOMMENDED REMEDIAL PLAN has been served on the following counsel of record, properly addressed by depositing same in the United States mail, postage prepaid on this 1st day of May, 1989.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

vs.

LOUISIANA

VERKUIL, *Special Master.*

FINAL REPORT

[Filed May 30, 1989]

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I. PROCEDURAL OVERVIEW

On August 12, 1988, the United States District Court for the Eastern District of Louisiana issued an order granting the United States' motion for summary judgment against the State of Louisiana on the issue of liability for operating a dual college system based on race. *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988) (three judge court). In its opinion, the Court determined that the current consent decree, under which the parties had operated from September 1981 until December 1987, had failed to achieve the desired goal of eradicating the racial identifiability of Louisiana's formerly black and white colleges. In fact the Court noted that, while not all contemplated funds were expended under the consent decree, the overall result during this period was more rather than less racial segregation:

> Despite the slight increase in black enrollment statewide, the racial polarization base increased as a whole during the term of the consent decree: the predominantly white institutions had about 2000 fewer black students in 1987 than in 1981, while the predominantly black institutions showed only a negligible increase in white enrollment from around 0.3% in 1981 to around 1.1% in 1987.
>
> In 1981, around 55% of the black students enrolled at institutions of public higher education in the state were enrolled at predominantly white institutions, while in 1987 the corresponding figure fell significantly to about 47%. (692 F. Supp. at 645.)

As a consequence, the Court determined that the consent decree process was a failure: "It is now apparent that the failure was not in spending too little, but rather was in the entire structure of the current decree." 692 F. Supp. at 658. The Court concluded by noting that a "drastic change" may be required and offered some suggestions:

> A possible remedy that suggests itself to the court would be one that (1) reduces the number of senior colleges and many of their duplicative programs, in particular, to avoid the duplication in institutions in the same vicinity, (2) institutes a system of a junior colleges with open admissions to all high school graduates, (3) institutes higher entrance requirements to the remaining senior colleges, and (4) reverts the state supervision over the institutions to a single board. (692 F. Supp. at 658; footnotes omitted.)

By Opinion and Order of November 22, 1988, the Court elaborated upon its concerns in observing that "a plan that would basically require the state simply to spend extra money on the four black schools—could show little, if any, likelihood of success . . . ." Noting that "no consensus plan has been proposed," the Court offered the guidance that the single board concept, previously suggested, "is likely to be a part of any remedy that will be adopted or imposed." This Order also informed the parties that in the event no acceptable plan was submitted, the Court would appoint a special master "for the purpose of assisting the Court in ordering a final remedial plan and judgment."

By Order of Reference dated December 2, 1988, Paul R. Verkuil was appointed Special Master and invested with the authority under Fed. R. Civ. P. 53 to review the proposed plans submitted by the parties "and to conduct hearings regarding the viability of the proposed plans,

and any other appropriate remedial measures." On December 16, 1988, the Counsel for the parties met with the Special Master. During the meeting a schedule was set for submission of amendments to remedial plans, for submission of written reports and for the scheduling of depositions. Also on this date David Boies of the New York Bar and Max Nathan, Jr. of the Louisiana Bar were appointed as counsel and Reginald Clark as assistant to the Special Master.

Amendments to proposed plans from all parties were submitted on January 23, 1989. On January 25, a status conference for attorneys was held by the Special Master at which the deposition schedules were discussed and set. During the next month the depositions of 33 witnesses for the various parties were taken. Periodic telephonic conferences were held by the Special Master with counsel to the parties under the guidance and in the offices of Max Nathan, Jr.

On March 1, 1989, a status conference with attorneys was held in the Special Master's Chambers, Room 300, U.S. Court of Appeals for the Fifth Circuit. The first item involved a motion for a protective order brought by the United States and Southern University to seal all pretrial depositions. Counsel for the Times-Picayune Publishing Corporation sought to intervene urging denial of the motion. The Special Master, while not ruling on the motion to intervene, ruled against the motion for a protective order. Under Fed. R. Civ. P. 26(c) protective orders can only be issued where good cause is shown. In this case the Master could find no specific example of embarrassment or need for confidentiality to be demonstrated by the moving parties. This decision was appealed to the Court and affirmed on March 2, 1989.

A further meeting of counsel was held on March 6, 1989, during which the designation of witnesses to be

heard live was made by the Special Master. The hearing commenced on March 7, 1989, in United States District Court, Room C552, at 8:00 a.m. At the opening of the hearing counsel for all parties approached the Master and stated that settlement negotiations were underway. In light of this development the parties requested an adjournment of the hearing. The Master thereupon agreed that the hearing would be adjourned pending settlement discussions on the condition that the pretrial depositions, written statements and exhibits could be entered into evidence, subject to specific motions to strike, as the parties' case-in-chief. All parties concurred in this approach and it was entered into the record by Minute Entry dated March 8, 1989. The remainder of the week was consumed by settlement discussions between the parties and by periodic meetings with the Master to report on the progress of the discussions.

On March 13, 1989, the parties met with the Special Master to discuss the progress of settlement discussions both generally and specifically with respect to Lincoln Parish (Grambling and Louisiana Tech). After learning from counsel that an overall settlement had not been achieved, the hearing was set for 1:00 p.m. that day to hear rebuttal witnesses and questions of certain witnesses by the Special Master. The case-in-chief was introduced in written form which included the statements of 78 witnesses along with the depositions of 33 and extensive exhibits. A complete list of witnesses is included as Appendix A.

The rebuttal hearing was conducted during March 13, 14 and 15, 1989. Dr. Tremblay, Dr. Caillier, Dr. Wharton, Dr. Conrad, Dr. Spikes and Dr. McTarnaghan were examined by the parties and the Master. Motions to strike were made on March 20 and ruled upon by the

Master on March 24. Post-hearing motions were also disposed of by the Master on that date. Post-hearing memoranda were served and filed on March 31.

On April 18, 1989, the Special Master filed a Recommended Remedial Plan with the Court. By prior agreement, the parties were permitted to comment on the plan and to submit proposed amendments, which were filed on May 2. Thereafter, on May 9, oral argument was held in New Orleans at which each party was permitted to present its own proposed amendments and to comment on the other parties' proposed amendments. At oral argument, the parties were requested by the Special Master to submit resumes of current board members for possible inclusion on an interim board.

This Final Report and the accompanying Proposed Order constitute the Special Master's final recommendation to the Court.

II. THE LOUISIANA SYSTEM OF HIGHER EDUCATION

Louisiana currently has seventeen general state institutions of higher learning, organized under four separate governing boards. The Board of Regents has general responsibility for planning, coordinating and reviewing the budgets and academic program offerings of each state university. Each of the three remaining boards has separate direct management authority for a number of the universities. The Louisiana State University Board of Supervisors ("LSU Supervisors") oversees: Louisiana State University and Agricultural and Mechanical College in Baton Rouge ("LSU A&M"), the University of New Orleans ("UNO"), Louisiana State University at Shreveport ("LSU-S"), Louisiana State University at Alexandria ("LSU-A"), and Louisiana State University at Eunice ("LSU-E"). The Southern University Board of Supervisors ("Southern Supervisors") oversees: Southern University at Baton Rouge ("SUBR"), South-

ern University at New Orleans ("SUNO") and Southern University at Shreveport/Bossier City ("SUSBO"). The Board of Trustees for State Colleges and Universities ("Trustees") oversees: Louisiana Tech University in Ruston ("Louisiana Tech"), Grambling State University ("Grambling"), University of Southwestern Louisiana in Lafayette ("USL"), Northeast Louisiana University in Monroe ("Northeast"), Northwestern State University in Natchitoches ("Northwestern"), Southeastern Louisiana University in Hammond ("Southeastern"), McNeese State University in Lake Charles ("McNeese"), Nicholls State University in Thibodaux ("Nicholls"), and Delgado Community College in New Orleans ("Delgado").

Of these institutions, LSU-A, LSU-E, SUSBO and Delgado have only two-year programs. Additionally, SUNO maintains a number of two-year programs as well as four-year programs. Two other public community colleges—Bossier Parish Community College and St. Bernard Parish Community College—are separately managed by the State Board of Elementary and Secondary Education and are no longer defendants in this case, having been granted summary judgment in the Court's August 2, 1988, ruling. 692 F. Supp. at 659-59. There is not, however, any statewide system of community colleges and a number of regions in the state—most notably the state capital of Baton Rouge—have no two-year community college.

The remaining schools listed above all have four-year undergraduate programs and varying programs for graduate studies. Three state professional schools are also organized under the same three management boards. The Louisiana State University Medical Center, located in New Orleans and Shreveport, and the Paul M. Hebert Law Center, located in Baton Rouge, are overseen by the LSU Supervisors. The Southern University Law Center, also in Baton Rouge, is overseen by the Southern Supervisors. Finally, LSU has a separate Agricultural Center in Baton Rouge, overseen by the LSU Supervisors.

The current governing structure for state universities was created as part of a revision of the Louisiana Constitution in 1974. Prior to 1974, statewide coordination was provided by the Louisiana Coordinating Counsel for Higher Education, itself created in 1968, which had more limited powers than the current Board of Regents. Most of the state universities were governed by the State Board of Education at that time, although the Louisiana State University Board of Supervisors separately governed the LSU schools. The 1974 constitutional revisions divided the direct governance for state universities into the three current governance boards and gave the Regents enhanced, though not complete, control over budgetary and program matters. The governance issue was recently revisited in the state legislature where a measure to amend the constitution and create a single governing board was introduced, but the vote came up short of the two-thirds approval needed to submit the proposed amendment to the state's voters.

As the Court's August 2, 1988, opinion discusses, four state universities—SUBR, SUNO, SUSBO and Grambling—were originally established as institutions for blacks only. 692 F. Supp. at 647. The remaining four-year state universities were established for whites only. It was not until some time after the enactment of the Civil Rights Act of 1964 that the State of Louisiana discontinued official recognition of state universities as single race institutions. With respect to most schools, de facto racial identifiability has continued to the present. The chart below (updating the chart provided in the Court's August 2, 1988, opinion, 692 F. Supp. at 645) notes the enrollment at each institution, by race, comparing 1981, the year the consent decree was implemented, with 1988.

Chart 1

Enrollment at Louisiana Public University By Race, 1981 and 1988

University	1981 Black		1981 White		1981 Total	1988 Black		1988 White		1988 Total
Trustees	#	%	#	%		#	%	#	%	
Delgado	3,371	40.1	4,348	51.7	8,404	2,257	31.5	4,268	59.6	7,161
Grambling	3,777	98.5	44	1.1	3,834	5,626	95.8	225	3.8	5,870
Louisiana Tech	1,194	11.6	8,489	82.5	10,288	1,236	12.7	7,186	73.7	9,751
McNeese	1,062	15.3	5,706	82.2	6,943	1,004	13.8	6,156	84.3	7,300
Nicholls	1,068	15.0	5,954	83.6	7,119	819	11.5	6,180	86.6	7,139
Northeast	2,431	22.0	8,544	77.2	11,071	1,539	15.1	8,461	83.0	10,193
Northwestern	1,296	19.4	4,448	66.6	6,682	1,258	19.5	4,768	74.1	6,438
Southeastern	1,112	12.6	7,633	86.2	8,854	577	6.7	7,868	91.7	8,582
USL	2,380	17.4	10,931	79.8	13,702	2,478	17.5	11,200	79.2	14,143
LSU Supervisors										
LSU-A	151	9.9	1,357	88.8	1,528	214	9.7	1,949	88.6	2,201
LSU-A&M	1,688	6.3	22,832	84.7	26,964	1,906	7.5	22,259	88.0	25,296
LSU-E	237	15.5	1,283	84.0	1,528	242	13.9	1,483	85.1	1,743
LSU Law School	16	1.9	830	96.1	864	30	3.8	746	94.9	786
LSU-S	315	7.6	3,803	91.5	4,155	381	8.5	3,991	88.9	4,490
UNO	2,491	16.1	11,519	74.6	15,432	2,439	15.5	12,053	76.5	15,752
Southern Supervisors										
SUBR	7,655	86.4	288	2.6	8,855	8,267	92.7	398	4.5	8,921
SUNO	1,994	82.4	11	0.5	2,420	3,130	83.9	436	11.7	3,731
SUSBO	661	99.8	1	0.2	662	1,118	89.7	122	9.8	1,246
Total	32,899	23.6	97,961	70.3	139,305	34,521	24.5	99,749	70.9	140,743

Source: Tremblay Witness Statement, Attachment A.

As the chart illustrates, the racial identifiability of Louisiana's state universities is especially evident in the fact that, in four areas of the state, predominantly black institutions (PBIs) and predominantly white institutions (PWIs) coexist in close geographic proximity. In New Orleans, SUNO currently has 83.9 percent black and 11.7 percent white enrollment, while UNO has 15.5 percent black and 76.5 percent white enrollment. In Baton Rouge, SUBR has 92.7 percent black and 4.5 percent white enrollment, while LSU A&M has 7.5 percent black and 88.0 percent white enrollment. In the Shreveport/Bossier City area, SUSBO has 89.7 percent black and 9.8 percent white enrollment while LSU-S has 8.5 percent black and 88.9 percent white enrollment. Finally, in Lincoln Parish, Grambling has 95.8 percent black and 3.8 percent white enrollment, while Louisiana Tech, in nearby Ruston, has 12.7 percent black and 73.7 percent white enrollment.

The governing boards of these universities are also racially identifiable. The Board of Regents currently has 16 members, 13 (81 percent) of whom are white and 3 (19 percent) of whom are black. Of the 18 LSU Supervisors, 14 (78 percent) are white and 4 (22 percent) are black. The Southern Board of Supervisors has 4 white (22 percent) and 14 black (78 percent) members. The Trustees are the most integrated of the four boards, with 13 of 18 members (72 percent) white and 5 members (28 percent) black. According to the most recent data available, the total population of the State of Louisiana is 4.5 million, 69 percent white and 29 percent black.

According to the statewide student profile compiled by the Board of Regents (SSPS), in the fall of 1988 only 27,146 freshmen enrolled in state universities, but given past patterns, most of them will not graduate. Of the 21,470 students who enrolled as first-time freshmen in the fall of 1982, only 7,133 or 33.2 percent had graduated by the spring of 1988, six years later. The chart below

shows the graduation rates for each of Louisiana's 17 universities over the same six-year period.

Chart 2

Graduation Rates at Louisiana Public Universities, 1982 to 1988

Institution	Number Enrolled Fall 1982	Graduated by Spring 1988 Number	Percentage
Trustees			
Delgado	705	106	15.0
Grambling	674	287	42.6
Louisiana Tech	1,644	761	46.3
McNeese	1,285	330	25.7
Nicholls	1,398	477	34.1
Northeast	1,580	534	33.8
Northwestern	745	258	34.6
Southeastern	1,695	546	32.2
USL	2,310	788	34.1
LSU Supervisors			
LSU A&M	4,486	2,103	44.9
LSU-A	421	88	20.9
LSU-E	270	89	33.0
LSU-S	464	110	23.7
UNO	1,931	364	18.9
Southern Supervisors			
SUBR	1,294	328	25.3
SUNO	352	30	8.5
SUSBO	216	24	11.1
TOTAL	21,470	7,133	33.2

Source: Tremblay Witness Statement, Attachment C.

As the chart shows, no state university in Louisiana graduated half of its enrollees within six years, and six institutions failed to graduate even one quarter of their enrollees. The national average for public universities is 44.9 graduation over six years. (American Council on Education, Digest of Education Statistics 249 (1988).)

The overwhelming majority of students enrolled in state universities in Louisiana are state residents. Ac-

cording to Board of Regents SSPS data, of first-time freshmen in the fall of 1988, 90.3 percent were Louisiana residents and 9.7 percent were non-residents. (Wharton Hearing Exhibit 6B.) Moreover, 58.5 percent of the first-time freshmen in this sample entered a university in their home parish or in a parish adjacent to their home parish, while 41.5 percent ventured further from contiguous parishes to attend college within the state.

The data also show that black students and PBIs account for a much greater percentage of non-resident students and students from non-contiguous parishes than do white students and PWIs. For instance, of the 2,627 non-resident students enrolling as first-time freshmen in fall 1988, 1,539 (58.5 percent) were black and 1,401 (53.5 percent) went to PBIs. By comparison, blacks made up only 28.0 percent of the total entering class and PBIs accounted for only 15.3 percent of total entering students. PBIs clearly attract more non-resident students and students from distant parishes within the state than do PWIs. In the fall of 1988, 33.7 percent of students at PBIs were non-residents and 63.4 percent came from non-contiguous parishes, while only 5.3 percent of students at PWIs were non-residents and 37.6 percent came from non-contiguous parishes. Non-resident black students are also far more likely to go to PBIs than are resident blacks. Overall, 52.7 percent of black students entering in the fall of 1988 went to PBIs, but the rate was 88.2 percent for non-resident blacks attending PBIs as compared to 43.6 percent of resident blacks. (Wharton Hearing Exhibit 6B.)

In fact, in 1988 only one state university, Grambling, a PBI, attracted more than half (55.4 percent) of its student body from out of state. Thus Grambling, with California supplying the largest number of students after Louisiana, is a "national" university in terms of the residences of its students. By comparison, at LSU A&M,

Louisiana's "flagship" university, only 8.4 percent of its student body came from outside the state.

In addressing the problems of desegregating state universities in Louisiana, it is also necessary to focus on the relative college preparation level and college-going rates for black and white high school students in Louisiana. According to data compiled by the Louisiana State Department of Education, there were 46,222 high school graduates in 1988, 15,018 (32.5 percent) of whom were black and 30,126 (65.2 percent) of whom were white. (Tremblay Hearing Exhibit 4.) Of these 1988 graduates, 38,844 (84.0 percent) came from public high schools and 7,378 (16.0 percent) came from private high schools. Public high school graduates were disproportionately black (36.7 percent black/60.9 percent white) while private high school graduates were disproportionately white (10.4 percent black/87.5 percent white). Viewed another way, 5.1 percent of black students graduated from private high schools, whereas 21.4 percent of white students graduated from private schools. This disparity is especially pronounced in certain areas, like Orleans Parish, where 83.9 percent of blacks go to public high schools but 90.0 percent of white students go to private high schools.

College-going rates in Louisiana are also much higher for white students than for black students. In 1988, 17,816 of the total 46,222 graduating high school students in Louisiana (38.5 percent) went to college but blacks accounted for only 4,263 of these college-going high school graduates, yielding a college-going rate for blacks of 28.4 percent. (Tremblay Hearing Exhibit 4.) By contrast, whites accounted for 12,647 college entrants, yielding a 42.0 percent college-going rate for whites. This disparity in college-going rates has remained relatively constant in recent years. Five years ago, for instance, in 1983, the college-going rate for blacks was 29.2 percent and the college-going rate for whites was 42.5 percent.

Of those students who do go on to state universities in Louisiana, whites are much better prepared than blacks. According to 1987-88 data from the American College Testing Program (ACT), the mean high school grade point average (GPA) for all public college attendees was 2.75. (Wharton Hearing Exhibit 6A.) The mean GPA for blacks, however, was 2.54 while the mean GPA for whites was 2.80. Likewise, the mean ACT score for blacks was 12.74 compared to an 18.67 mean ACT score for whites. This disparity in preparation is also reflected in the percentage of first-time freshmen in state universities who are enrolled in "developmental" (*i.e.*, remedial) education courses. According to Board of Regents data, in the fall of 1988, 12,897 (48.0 percent) of all first-time freshmen were enrolled in remedial courses, but the rate for black students (71.7 percent) was much higher than the rate for white students (38.5 percent). (Tremblay Hearing Exhibit 2.)

The Louisiana system of public higher education is faced therefore with a lower college-going rate than the national average and a lower preparation level on average, with black students in each case being behind white. In what was formerly a dual system of higher education, the PBIs still educate over 50% of the black students who enter higher education. The Court's concern which led to the appointment of a Special Master was precisely that during the period of the consent decree from 1981 to 1987, while more black students entered higher education, the percentage of black students educated at PBIs versus PWIs increased. Thus the issue of racial separation in higher education in Louisiana remains still to be resolved.

III. THE PROPOSED REMEDIAL PLANS

Following its August 2, 1988, summary judgment ruling, the Court ordered that proposed remedial plans be submitted by November 14, 1988. Four parties sub-

mitted plans in November: the State of Louisiana (through Governor Roemer), the United States, the Southern Supervisors, and the Grambling State University Alumni Association ("Grambling Alumni"). Three other state entities—the LSU Supervisors, the Board of Regents and the Board of Trustees—are separate parties to this action but subscribed to the single plan submitted by Governor Roemer. Following the Court's November 22 ruling and the appointment of the Special Master in December, each of the original proposed plans was amended. In developing this remedial recommendation to the Court, the Master reviewed both the original and amended plans and, to the extent they differed, did not consider himself limited to the proposals as amended.[1]

To aid in preparing the State Plan, Governor Roemer appointed a special Task Force on Desegregation of Public Higher Education in Louisiana following the Court's August 24 status conference. The Task Force was composed of 24 members, including two representatives from each of the four governing boards and one representative from each of eight state universities. It met for approximately eight weeks and developed one master desegregation plan for the state and four regional subcommittee reports (New Orleans, Baton Rouge-Hammond, Lincoln Parish and Shreveport-Bossier City) relating to special problems in those areas. The final Task

[1] The Special Master has also received numerous submissions from non-parties, ranging from short letters to full-scale remedial plans. These submissions reflect the breadth and depth of public interest in the issues raised by this case and illustrate the considerable implications of any remedial approach. But because the non-party submissions are so numerous, they could not be made part of the record without overly complicating this already complex case and unduly delaying its resolution. In only one situation was a proposed remedial plan submitted to counsel and read by the Master. This involved the Citizens Commission for Equity and Excellance in Louisiana Universities. This proposal is mentioned at the outset of the section entitled Discussion, Analysis and Findings (pp. 35-36 *infra*).

Force Report was submitted as an appendix to the State Plan. The State Plan, while not endorsing wholesale the Task Force proposals, adopted the same basic position on each of the Task Force's major recommendations.

The principal remedial proposal put forth by the State is the creation of a single governing board for all state universities in Louisiana to replace the current four-board structure. The State argues that infighting and factionalism among the three governing boards, combined with insufficient oversight authority in the Board of Regents, has led to excessive program duplication in Louisiana and an uncoordinated approach to desegregation. The State's new proposed governing board would vest ultimate authority over all budgetary, administrative and academic affairs of the state universities in a single board. This board would also be responsible for developing a "Master Plan," defining the role, scope and mission of each institution, and an overall plan for desegration. Members of the governing board would be drawn from each congressional district and the racial composition of the board would be set by statute to reflect the overall racial composition of the state population.

The State Plan also calls for restructuring the organization of state universities into tiers, with graduated admissions requirements. The State Plan would place LSU A&M alone into the top tier, making it the state's flagship school with the highest admissions requirements. There would also be a level of "doctoral" institutions, with intermediate admissions criteria, a level of "comprehensive" universities, with low admissions criteria or open admissions, and a comprehensive community college system with open admissions. The desegregation rationale behind the call for selective admissions and tiering is that such requirements will sort students out at universities by ability and areas of academic interest rather than by race. The State Plan recognizes that

admissions exceptions of up to ten percent might be required to ensure an adequate number of "other race" students at each state university.

To address the Court's concern about program duplication, the original State Plan proposed an aggressive plan of academic program transfers and exclusive assignment of high demand programs. These program transfers were centered on the four pairs of proximate PBIs and PWIs in the state. It was hoped that, by exclusively assigning certain programs to one school, students wishing to study in particular fields would have no choice but to attend that school rather than being able to choose between a PBI and a PWI. When the State filed its Amended Plan in January, however, it did an abrupt about-face on the issue of program transfer. Contradicting the recommendations of its own Task Force, the State now argues that there are so many potential pitfalls with program transfers (the transferee school may not be educationally equipped to offer the course, students and faculty associated with a program may not be willing to move to a new school) that they should not be broadly endorsed. Thus the State has withdrawn its support for any program transfers in the Baton Rouge and New Orleans areas and even opposed in its Amended Plan a number of transfers in Lincoln Parish to which Grambling and Louisiana Tech have both voluntarily agreed.

Based on the recommendation of the Task Force, the State Plan also opposes any merger of state universities. The State's position is that the merger of even proximate PBIs and PWIs is unwise because it would jeopardize the "important and historical role that Louisiana's predominantly black schools have played in educating our black children." (Original State Plan, at 19.) The State also argues there has been no demonstrated success in mergers that have been attempted in other states.

Although it is the plaintiff in this action, the original remedial plan submitted by the United States was quite modest. It neither supported nor opposed a single governing board, arguing that the current management structure "could be effective." (Original United States Plan, at 8.) On the issue of institutional duplication, the United States noted that there are "a number of workable techniques" including program transfer and exclusive program assignment, but it offered no specifics. The United States also voiced general support for tiering of state universities and the concomitant use of selective admissions requirements, but offered no specific proposals. Finally, the United States urged that increased state money be used to enhance the quality of academic programs and physical facilities at PBIs, in order to make them more attractive to other race students.

The United States' Amended Plan offered a number of more specific proposals. On the governance issue, the United States retained its "no objection" to the single board stance, but added two caveats. First, the United States "opposes strenuously the state's suggestion that gender, ethnic or—especially—racial quotas" be used in establishing the board. (Amending United States Plan, at 9 n.4.) Second, the United States argued that the creation of a single board should not delay the implementing of any other desegregation remedy.[2]

On the reclassification of state universities, the Amended United States Plan proposes five tiers, much

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[2] The United States estimates that it will take between 18 and 24 months to restructure the existing governing boards and objects to the State's suggestion that implementation of other remedial measures be delayed until the single board is in position to oversee them. The United States argues that such delay is unnecessary and that implementation should begin immediately using an existing board, like the Regents, if necessary, and then passing remedial work along to the single board when it is equipped to continue the task. This suggestion is addressed in the section entitled Interim Procedures (pp. 113-120 *infra*).

along the lines of the tiers proposed by the state: research universities (LSU A&M only), professional institutions, doctoral universities, comprehensive universities and community colleges. There would be graduated admissions requirements at the four-year universities under the United States' Amended Plan, with LSU as the flagship school having the highest standards and the community college system retaining open admissions. As with the single board, the United States firmly opposes the use of racial quotas for admissions requirements exceptions. Instead, the United States proposes "race neutral" exceptions for "high risk students" (Amended United States Plan, at 11)—a term it leaves undefined.

To eliminate unnecessary programs, the United States proposes a series of academic program transfers, including the exclusive assignment of a number of programs to one or another of the proximate state universities. The United States' proposals in this regard are much like those contained in the State's Original Plan, but abandoned in the Amended Plan. To help ensure that state universities attract other race students, the United States also suggests that nondiscriminatory enrollment ceilings be placed on popular courses at certain universities. The ceilings would prevent students from overenrolling in programs at one university rather than attending an other race school.

Unlike the State Plan, the United States Amended Plan focuses on enhancement of PBIs as a crucial desegregation remedy. Notwithstanding that the Court has declared the consent decree no longer in effect, the United States urges that the State must "comp'ete" its obligations under the consent decree, and spend money to enhance academic programs and facilities at PBIs. In order to continue receiving enhancement funds under the United States Plan, the PBIs would have to take steps to ensure that the programs receiving funding also obtained necessary accreditations and otherwise met certain "quality" standards. Along similar lines, the

Amended United States Plan would obligate the State to monitor college-going rates for blacks and to implement recruitment programs designed to increase black enrollment at state universities. The proposed recruitment strategy would include developing strong equal opportunity policies at state schools, initiating an aggressive public information campaign, and devoting funds to scholarships for black students, in keeping with the State's "commitment" under the consent decree.

Finally, the United States proposes that these and all other desegregation remedies be overseen by a separate monitoring committee, not unlike the previous Consent Decree Monitoring Committee. The monitoring committee would have responsibility for reviewing all desegregation efforts, compiling relevant data, and filing an annual report with the Court.

The remedial proposal of the Southern University Board of Supervisors takes a much different approach, disagreeing with most of the remedies suggested by the State, the United States and even the Court. For instance, notwithstanding the Court's November 22, 1988, admonition that a single state governing board "is likely to be a part of a remedy that will be adopted or imposed," the Southern Supervisors come out strongly against a single board. The Southern Supervisors argue that a single board would over-centralize management of state universities, making the governing structure more distant, less flexible and less effective. Southern also claims that a single board would subvert the interests of black students, because there would no longer be a board having majority black membership to advocate and protect the special educational needs of black students.

For similar reasons, the Southern Supervisors generally oppose the advent of selective admissions requirements and the creation of a comprehensive community college system. Southern acknowledges that selective ad-

missions may be appropriate at LSU A&M as the state's flagship school, and even at Louisiana Tech and UNO, but argues that admissions requirements elsewhere would have a segregative effect, by forcing disadvantaged minority students out of selective upper tier schools and into open admissions lower tier schools and community colleges. Southern also argues that forcing selective admission requirements on the PBIs would undermine their special role in providing developmental education courses to disadvantaged and underprepared black students. Southern would accept—and indeed proposes—a tiered reclassification of state universities to help clarify the mission of each school, but opposes tying selective admissions requirements to the tiers.

Even to the extent that affirmative action programs and admissions exceptions for minority students might serve to get blacks admitted to selective schools, Southern maintains that such exceptions are degrading and ineffective in a broader sense. Students gaining admissions under an exception, and thus by implication other students of the same race, would, Southern asserts, be branded as inferior and stigmatized.

Related to Southern's opposition to selective admissions is its opposition to an enhanced role for community colleges—another step suggested by the Court. Southern argues that community colleges would become a dumping ground for disadvantaged minority students who would not qualify for admission to selective schools. An enhanced role for community colleges would also, Southern asserts, undermine the well-developed and effective developmental education programs now in place at the PBIs.

To address the problem of academic program duplication, Southern proposes a number of program transfers, almost exclusively transfers *from* PWIs *to* Southern and not from Southern to PWI. Like the other parties, South-

ern opposes merger or closing of any state university, which it claims would be ineffective. And as with its position on selective admissions, Southern argues that merger is also a bad idea because it would destroy the important historical role of PBIs in educating disadvantaged blacks.

Other remedial suggestions from the Southern Supervisors relate to enhancement of PBIs, recruitment for other race students and monitoring of desegregation efforts. On the issue of enhancement, Southern argues that the State should provide increased funding to improve the quality of programs and facilities at the PBIs. Southern even suggests creating a number of new doctoral programs at SUBR, both to attract an integrated student body for USBR and to generate more black Ph.D. candidates who could go on to faculty and administrative positions at state universities. Southern's recruitment proposals include the use of biracial recruiting teams, increased financial aid and scholarships for other race students, and starting apprenticeship and college preparatory programs that would link PWIs with black high school students, breaking down barriers and encouraging more blacks to attend college.

On the issue of monitoring, Southern urges that a separate monitoring committee be set up to oversee the desegregation efforts of the current boards, which Southern views as continuing to exist. Ironically, however, the independent monitoring committee would, in Southern's view, itself be composed of representatives from the four other boards. This monitoring committee would have advisory boards at each campus and would have the power to sanction individuals and institutions for not meeting goals toward desegregation. On the other hand, Southern also suggests that incentives be provided (perhaps in the form of additional scholarships) to reward institutions for remarkable progress, and to encourage such progress elsewhere. An additional Southern monitoring proposal

would require the State to make annual reports to the Court concerning progress toward desegregation.

The remedial proposal of the Grambling Alumni is much more limited than the other parties' plans, focusing exclusively on the situation at Grambling. For instances, the Grambling Alumni take no position on the issue of creating a single state governing board. The Grambling Alumni also address selective admissions only at Grambling—opposing admissions requirements there—and propose programs transfers only between Grambling and Louisiana Tech.[3] Finally, the Grambling Alumni propose a number of ways in which the quality of academic programs and physical facilities at Grambling should be enhanced through the expenditure of additional state money.

IV. DISCUSSION, ANALYSIS AND FINDINGS

Introduction

The Master's assignment in this case is to take a broad view of the evidence and the history of this litigation and fashion a proposed remedy for consideration by the Court. The Court's instructions make it clear that the Master is bound neither by the plans submitted by the parties (which the Court found inadequate in any event) nor by the Court's own suggested remedies which have been outlined above. In other words, the Master is free to propose any remedy that is supported by the record and is consistent with his experience in higher educattion.

This challenge means that the widest possible consideration has been given to potential remedies, whether or not they were suggested by the parties or the Court. In making this inquiry the Master has, however, been guided by

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[3] Additionally, the Grambling Alumni suggest that some programs at other state universities in North Central Louisiana (*e.g.* Northeast, LSU-Shreveport) to be terminated so that Grambling would have exclusive offerings.

certain protocols of evaluation. First, it is essential that any proposed remedy be grounded in realistic assumptions about the way higher education works. Even after much study, orders issued from on high always risk failure when they have to be accepted at more remote operating levels. Therefore, proposed solutions must take into account the relationship between policy-making and implementation. For a remedy to succeed it must be internalized in the bureaucratic organizations themselves. This approach counsels that the parties' own suggestions and proposals should be carefully explored and utilized insofar as possible in shaping the final outcome. A second and related consideration is the fact that this Master's functions are part of a judicial process to end the racial identifiability of Louisiana higher education. Remedies proposed should be directed primarily to that end. Nonetheless, issues relating to quality and efficiency of education cannot be ignored. The goal is to produce successful students, black and white, who benefit from the opportunity to learn together atnd who, upon graduation, will help the state to prosper in the future.

The Merger Question

It is in this light that the Master analyzed the question of merger of institutions. Not surprisingly, none of the parties is in favor of this approach. Even if one party or institution could suggest merger for others in the system, there is a reluctance to do so because of the danger that ohhers would return the favor. Nonetheless, merger has been employed as a remedy in at least one state. *See Geier v. Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd*, *Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir.), *cert. denied*, 444 U.S. 886 (1979) (merger of Tennessee State University and University of Tennessee at Nashville). And it has been suggested by non-parties as a solution to Louisiana's problem. (*See, e.g.*, Citizens Committee for Equity and Excellence in Louisiana Universities, November 7, 1988 letter to the Court (which

has been circulated to counsel).) The obvious candidates for merger are LSU A&M-SUBR in Baton Rouge, Grambling-Louisiana Tech in Ruston, UNO-SUNO in New Orleans, LSUS-SUSBO in Shreveport.

Several witnesses have testified as to the inappropriateness of merger as a desegregation solution. Wayne Brown, Dean of Business at Belmont College (at LSU witness) examined the Tennessee merger and argued that it was unsuccessful. (*See generally* Brown Witness Statement.) David A. Wise, Professor of Political Economy at Harvard's JFK School (also an LSU witness), sought to demonstrate that merger of schools where students' academic backgrounds are different will not be successful. (Wise Witness Statement, at 9-10; Wise Deposition, at 53-54.)

Merger of institutions is an extreme remedy that should be resorted to only if other remedies have failed. It has an appeal because planners can in one act combine proximate institutions with high white or black ratios into one racially balanced institution. But this kind of numbers game is often of short term benefit only. Institutions whose only commonality is in fact geographic proximity may not stay racially-balanced in the longer term. Faculty and administration are attracted to an institution because of its academic characteristics and mission orientation. Changing those dramatically upsets career choices and jeopardizes the professional relationships that make a school operate successfully. Merging institutions with student bodies of significantly different levels of preparation places the students and faculty in difficult relationships. While these difficulties may be worked out over time, merger remains a solution that poses considerable risks without any sure benefits for desegregation or improved education.[4] Therefore, the Master believes that

[4] There are some other situations in this case, however, where reorganization if not merger appears feasible. This holds true for

merger should be held in reserve as a desegregation solution, to be utilized only if after a trial period of five years the remedies proposed herein have failed to reduce substantially or eliminate the racial identifiability of Louisiana's public universities.

Moreover, the merger (or co-university) idea as applied to proximate universities in Louisiana would undermine historically black institutions with proud traditions and substantial followings. Grambling and SUBR have large alumni bodies and a tradition of minority education that emanates from the era of the dual school system itself. Grambling is a national university in that it draws over one-half its students from other states. Southern has appended to its plan an impressive list of SUBR alumni, many of whom have served in important positions throughout the nation. In higher education, alumni support and institutional loyalties matter greatly. What was first said about Dartmouth College by Daniel Webster applies to others as well: "It is sir, as I have said, a small college and yet there are those who love it." (4 Beveridge, *The Life of John Marshall*, 248-49 (1919).) PBIs can generate that kind of loyalty as well. Under the circumstances, an opportunity must be given for Grambling and Southern to make every effort to integrate before extreme solutions are considered. Therefore, the Master proposes that the merger remedy be kept on the shelf at this stage.

The Role of Predominantly Black Institutions

The special role of PBIs has been long recognized. It was discussed in the *Adams* litigation, *see Adams v. Bell*, 711 F.2d 161 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984), and has been mentioned in the remedial

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New Orleans and Shreveport and they will be discussed under the section relating to the proposed community college system in Louisiana (*see* pp. 82-91 *infra*).

guidelines promulgated by HEW which emphasize that a unitary system of higher education must not be accomplished by placing a disproportionate burden upon black students or institutions or by reducing educational opportunities available to blacks. *See* Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 43 Fed. Reg. 6658 (1978); Amended Criteria Specifying Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 42 Fed. Reg. 40,780 (1977).[5]

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[5] The Southern Supervisors argue that the HEW criteria were promulgated in accordance with the Administrative Procedure Act and have the full force and effect of law. Thus, Southern argues, the Special Master's remedial recommendation "must" be fashioned in compliance with the criteria. (*See* Southern Pre-Trial Memorandum, at 12-13; Post-Trial Memorandum, at 44.) Southern's argument is not well taken. First, the very court that ordered HEW to develop the criteria did not treat them as binding rules. *See Adams v. Bell*, 711 F.2d 161, 165-66 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984) ("Thus, the point of his various court orders, as Judge Pratt explained, was not to specify what the final results of enforcement would be in every detail, *nor to decree unalterable requirements* for compliance with Title VI, but rather to have the Department initiate the process of enforcement, the process by which the specifics of compliance would then be determined.") (emphasis added). Second, as the State has pointed out, HEW itself admitted that the criteria were not promulgated in accordance with the rulemaking provisions of the APA and are not substantive regulations. (*See* Memorandum in Opposition to Respondents' Motion for Dismissal of the Administrative Proceedings, *In the Matter of the State of North Carolina*, HEW Docket No. 79-VI-1 (filed by HEW on Sept. 4, 1979), attached to State of Louisiana Post-Trial Memorandum ("Respondents argue that the criteria were not promulgated in conformance with APA requirements. We agree. Respondents argue that the criteria were not published in the *Federal Register* as a proposed rule. We agree. Respondents argue that the criteria are, therefore, not regulations. We agree. Nor were they intended to be.").) In the face of this record, Southern's reliance on a dissenting opinion in the *Adams* case is misplaced. (Southern Pre-Trial Memorandum, at 12-13;

While PBIs are of historical importance, it must also be recognized, as the State asserts, that the focus of this litigation is not institutions but students. (*See* State of Louisiana Post-Trial Memorandum, at 35-37; *United States v. Alabama*, 791 F.2d 1450, 1455-56 (11th Cir. 1986), *cert. denied*, 479 U.S. 1085 (1987) (state universities cannot assert fourteenth amendment rights against the state).) In 1988, 53 percent of Louisiana black entering freshmen were enrolled in PBIs and 47 percent in PWIs. (*See* Wharton Hearing Exhibit 6B, at 1-5.) This percentage of black students attending PBIs slightly exceeds that of 1981 when the consent decree began and was taken by the Court as an indication of the failure of the consent decree approach. Nevertheless, the opportunities for blacks in Louisiana higher education are clearly tied to the entire state higher education system. Any desegregation plan should seek to increase the number of Louisiana blacks who attend college, which is below the national average (Conrad Deposition, at 127), as well as to integrate the existing institutions, especially PBIs, whose percentage of other race students is below that of the PWIs. Over time, the challenge is to render the very terms PBI and PWI anachronistic.

The PBIs have developed attractive programs for black students which is reflected in the number of out-of-state black students they attract. But the State suggests that education of out-of-state students (white or black) should not be a priority of institutions in a state where the college-going and graduation rates of whites and blacks are so low. There is some merit in that position, especially if tuition levels are set so that in-state students subsidize out-of-state students. On the other hand, high out-of-state ratios are themselves indicative of the popularity and reputation the PBIs have earned.

Post-Trial Memorandum, at 44.) As a result, although the Master has reviewed the HEW criteria and considered them in developing his plan, he does not view them as rules binding in this case.

The more troubling implication is that the PBIs, while requesting additional money for enhancement, may be more intent on preserving their mission of serving black students than on expanding opportunities for white students. (*See* Spikes Witness Statement, at 29 ("white colleges are not capable of addressing the needs of black students"); Blake Deposition, Vol. II, at 5; Thomas Deposition, at 49-50; Allen Deposition, at 26.) The experience of the consent decree confirms that enhancement of PBIs without more simply makes PBIs more attractive to black students, without attracting white students. The focus of the Court's remedial plan, however, must be on improving the ability of PBIs to educate both black and white students. Preserving Southern and Grambling for their educational importance means preserving them as institutions for all Louisianians not just for black students.

A. *The Single Board*

Much of the evidence and testimony at the hearing before the Master, and in the Court's initial suggestions to the parties, has been directed at the creation of a single board to operate the public system of higher education in Louisiana. The state defendants including the Governor, the LSU System, the Board of Trustees and the Board of Regents all favor this concept even though it will result in a reduction or elimination of authority currently enjoyed by some of them. The Governor's 24-member Task Force proposed a single governance system to be known as the University of Louisiana Higher Education System.

On the other side of the single board question lies one of the defendants, Southern University Board of Supervisors. Southern's position is that the single board concept bears no necessary connection to desegregation. It cites examples of states where multiple or coordinating boards have done as well (or as poorly) as single board states in achieving desegregation and it emphasizes that

Louisiana's higher education governance arrangement was set in place by state constitutional enactment after this case began.

In the middle on the single board issue sits the United States.[6] The United States does not oppose the establishment of a single governing board so long as it operates on a desegregated basis. At the same time the United States maintains that the decision whether or not to create a single board should be for the state alone to make, not for the Court to order.

The critical inquiry on the single board question from the Master's perspective is whether its creation would increase integration of the public institutions—whether it would help to eliminate their racial identifiability. If that connection cannot be made from the record in this case, then the single board does not become a viable remedy no matter how much more efficient it may make higher education. However, this does not mean of course that desegregation and efficiency are mutually incompatible concepts. On the contrary, if a relationship between desegregation and efficient allocation of higher education resources can be shown, a stronger argument is presented. There can be no doubt that much of what needs to be accomplished to reduce racial identifiability will cost money. The efficient use of resources speaks to that concern as well as to the broader concern that all students, black and white, enjoy the highest quality education possible in the circumstances.

The various witnesses for the parties have discussed the pros and cons of the single board idea in great detail. Several witnesses submitted testimony on the importance of a single board towards the achievement of desegregation. Kerry Davidson, Joe D. Smith and James

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[6] The Grambling State University Alumni Association, which appears in this case as a litigating amicus, takes no position on the single board issue.

Wharton emphasized that the factionalism and rivalries produced by the present organizational structure make it difficult to concentrate attention upon the goals of either desegregation or efficiency. Governor Roemer testified that, by reducing bureaucracy and program duplication, funds will be freed up to enhance the operation of higher education and, presumably, to aid in the desegregation process. The state's witness, Roy McTarnaghan, Vice President for Academic Affairs at the University of Florida System, explicitly states that the single state board structure has facilitated desegregation in Florida. (McTarnaghan Witness Statement, at 8 ("Florida's success in implementing the [desegregation] plan was due primarily to a single board.").) McTarnaghan also testified in detail about the inefficiencies produced by what he identified as program duplication in Louisiana. (*Id.* at 15-18.) Eugene Trani, Vice President for Academic Affairs of the University of Wisconsin System testified that a single board is in the best position to address system-wide problems of a racially identifiable higher education system. (Trani Deposition, at 21-23.) Trani also identified a trend toward single governance structures in the states. (*Id.* at 34.)

This last point was contested by Southern University's witness, Marian Gade. Gade testified that there was a trend away from single board solutions to higher education organization. She also submitted a manuscript of a soon-to-be-published book entitled *The Guardians: Boards of Trustees of American Colleges and Universities* she coauthored with Clark Kerr. The Gade/Kerr book addresses generally the role of boards of trustees in higher education, providing factual background on how boards operate and noting advantages and disadvantages of various board structures. It provides a series of recommendations on such matters as board size, selection of board members and when board meetings should be open to the public. The burden of the Gade testimony was

that a centralized board leads to bureaucratization, top-heavy administration, and politicization of the governance process.

There was concern expressed by several witnesses about the potentially negative impact a single board might have upon historically black institutions and the students they educate. Larry Leslie, a witness offered by the United States, made the point that the Southern University Board of Supervisors protected that institution from the otherwise dominant voice of LSU as did the Board of Trustees for Grambling. The Task Force recommendations submitted by the State seek to blunt that concern by mandating that the racial makeup of the single board should reflect the percentage of blacks in Louisiana's population as a whole (Original State Plan, at 9). But the United States opposes any use of percentages on the grounds that they amount to racial quotas. (Amended United States Plan, at 9 n.4.) Another witness for the United States, Clifton Conrad, testified extensively on the State's Plan and came to the conclusion that the single board concept was no panacea for assuring desegregation in higher education. Conrad emphasized that what was needed to assure desegregation was a bureaucratic mechanism that had the "leverage" to assure that the desegregation plans got implemented (Conrad Deposition, at 85-87). In his view, this leverage might be better achieved through a court appointed monitoring team than a single board.

The organization of the single board was also addressed in the submissions. The State Task Force plan proposed a 17 member board (including a student member) with representation from each of the state's congressional districts. The Governor also emphasized the importance of geographical representation. The Task Force proposed that board members be appointed by the Governor and confirmed by the Senate. The Task Force plan also proposed that the single board have a full-time chief execu-

tive officer and staff, which would include a chief deputy with responsibility for desegregation matters. The board would have responsibility for all higher education budget matters, degree programs and the hiring and firing of campus chief executives. In addition the Task Force plan provided that each institution should have the opportunity to have local advisory boards of from 7 to 11 members who will be nominated by the head of the institution and appointed by the governing board. Its duties would be only those as were delegated by the board.

Its Potential for Success

In determining whether a single board can be utilized to improve integration of higher education in Louisiana, its potential must not be overstated. Admittedly, as several witnesses and parties have pointed out, the single board is no panacea. Segregation occurs in single board states and integration in multi-board or coordinated states. But panaceas are always in short supply. Just because the single board idea is no guarantee of success does not mean that it is not a step in that direction.

The value of the single board solution may well vary depending upon conditions existing in particular states at certain times. In Louisiana, at this time, the single board solution offers promise. For one thing, it is introduced against a background of higher education governance that is unusually complicated and divided. The present organization scheme in Louisiana—three operating and one coordinating board—almost guarantees a standoff between two "systems" (LSU and Southern) and the rest of higher education. Moreover, this arrangement has not succeeded in desegregating Louisiana's higher education, even though its creation postdates the Court's involvement in this case. Simply because the current board structure is the product of state constitutional choice does not make it the best arrangement to

achieve desegregation. The strongest argument of those favoring the present multi-board solution is that the structure of higher education in Louisiana is irrelevant to the goals of desegregation and therefore it ought not be changed. That is not an easy proposition to sustain.

McTarnaghan's testimony is convincing on the point that Louisiana's multi-board arrangement has led to unnecessary and costly program duplication.[7] Admittedly this testimony goes more to the question of efficiency than

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[7] McTarnaghan's Witness Statement provides the following chart illustrating program duplication in Louisiana as compared to Florida.

Chart 3

Comparison of Selected Bachelor's Degree Programs Offered and Degree Productivity: Florida and Louisiana Recent Five-Year Analysis

	Florida Programs Offered	Florida Average Degrees Per Yr.	Florida Degrees/ Programs Per Yr.	Louisiana Programs Offered	Louisiana Average Degrees Per Yr.	Louisiana Degrees/ Programs Per Yr.
Horticulture	2	29	14.6	6	12	2
Animal Science	2	57	28.5	10	84	8.4
Architecture	2	116	58	4	139	35
Journalism	3	178	59	9	91	10
Speech Correction	4	84	21	11	72	6.5
Business Education	6	67	11	13	72	5.5

Source: McTarnaghan Witness Statement, at 17-18.

the question of desegregation, but it shows that organizational structure can make a difference at least in that regard. Given the inevitable relationship between efficient use of program resources and the desire of students to attend institutions with attractive programs, it is sensible that efficient decisions might aid in desegregation as well. McTarnaghan believes that a single board structure was crucial to his state (Florida) achieving an improvement in desegregation of higher education. While that is a predictive judgment for Louisiana, it is certainly not in any way implausible.

Moreover, the conditions under which the judgment is offered must also be considered. The Governor of the state and three of its four boards (Southern in dissent) argue that it will work to achieve desegregation. That becomes a commitment to turn a structure, which in other circumstances might be policy-neutral, into an instrument of policy implementation. A specific mission to end racial indentifiability, embraced as such in its mandate, strengthens the case for the single board. It is persuasive evidence to the Master that most of the key participants who are needed to make desegregation work in this case are committed to this course of action.

The United States takes no position on the single board, but its witness Dr. Conrad's testimony is particularly relevant in this connection. While Conrad states that a single board concept by itself is no assurance of desegregation, he also concludes that an entity with sufficient power and clear vision, having what he calls "leverage", can achieve the desired policy outcome. (Conrad Deposition, at 85-87; Conrad Hearing Testimony, at 215-19.) Conrad talks in terms of this entity being a monitoring board appointed by the Court. But that option is dubious precisely because it removes those who must implement the plan from direct responsibility. There is no reason why the leverage function could not be undertaken by a single governing board if that entity is properly orga-

nized, instructed and supported. It is vastly superior to incorporate as much of the monitoring function as possible directly into the state organization rather than to leave it to an outside authority like the Court (or its appointees) which should be limited to an occasional (or even annual) reviewing function.[8] For the remedy to work, it must be internalized in the daily work of the state system.

The single board solution posits a relationship between efficiency and desegregation. McTarnaghan's testimony noted above emphasizes that program duplication seems to be a consequence of the multi-board structure in Louisiana. Program duplication is highly relevant to desegregation. As is more fully explained later in this recommendation, it is critical to the success of integrating the historically black institutions that they be upgraded and given desirable programs in order to attract significant number of white students. Only by creating an organizational structure with the power to make program decisions statewide can these efforts be achieved. Inefficiencies also suggest that dissipation of scarce resources for higher education which, given the difficult fiscal times Louisiana is facing, can only further impair the state's ability to enhance its historically black institutions.

Its Organization and Relation to PBIs

The main concern that arises from the single board solution has to do with the potential lack of protection such an organization will afford to Southern (and even Grambling) which according to testimony receive some measure of protection from the present multi-board structure. At the outset, it must be questioned why these schools, which level serious claims of mistreatment

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[8] Of course, this does not mean that there is no need for a monitoring function, just that it ought to serve a back-up role. That aspect of the recommendation is discussed at pp. 111-113 *infra*.

under the present system, are so much in favor of retaining it. It is true that Southern University has its own board; but that board must receive funds through allocation from the Board of Regents, a racially identifiable organization. Grambling has the Board of Trustees oversee its operations, which is also racially identifiable. The Southern Supervisors may provide some measure of political comfort but the limitations on its funding and program approval capacities are real. Moreover, given the fact that the Southern board is also racially identifiable in its membership, (14 black and 4 white members, *see* Beard Witness Statement Attachment A), it is not an obvious exponent of racial integration. It can never be forgotten that this case is about the integration of all of Louisiana's institution of higher education.

Of course, valid questions can arise if the proposed single board is configured so as to slight or ignore the valid educational needs of black or white students attending Southern and Grambling. The Task Force Plan approached this subject by recommending that the racial makeup of the single board approximate the percentage of blacks and whites in Louisiana's population. This would mean, for example, that on a 17 person board approximately five of its members would be black. Presumably a minority presence of this dimension would ensure a fair hearing for the concerns of Southern and Grambling. But that solution is opposed by the United States because it amounts, their counsel say, to a racial quota. Southern and Grambling have not responded to this approach at all.

The size as well as the racial makeup of a single board is also a matter of interest. Size can bear on effectiveness and effectiveness obviously relates to the leverage the single board must assert to achieve the desegregation remedy. If a board is too large its members will

lack the necessary involvement. On the other hand, if the board is too small it can be dominated by a few strong views. *See* Kerr and Gade, *The Guardians: Boards of Trustees of American Colleges and Universities* (forthcoming 1989) (where these factors are discussed and a minimum size board of 9 to 11 is recommended).

The three operating boards in Louisiana each have 18 members, broken down by race as follows: LSU Board of Supervisors (14 white/4 black); Southern University Board of Supervisors (4 white/14 black); Board of Trustees (13 white/5 black). The Board of Regents has 16 members (including one student), 3 of whom are black. Under the circumstances the size of the single board proposed by the Task Force of 17 members (including one student) seems reasonable from the point of view of effectiveness. The crucial question is the number of black members which at least for a period of transition under this new system might be appointed. The number of blacks assigned should exceed the percentage of blacks in the population of Louisiana for a limited period in order to ensure both a commitment to the desegregation remedy this court must decree, and an acceptance by the public of the determination to implement the decree.

Of course race alone does not ensure responsive action by board members. Hopefully all of the board members appointed, whether white and black, will be committed to improving the racial balance of Louisiana's public higher education. But for a transition period of five years the ratio of white to black should be adjusted to reflect the importance of the task ahead. A ratio of 10 whites to 7 blacks, excluding the non-voting student member whose racial make-up could change as he or she is replaced by another, is justified under the circumstances. Thus the new board would consist of 17 members appointed by the governor and confirmed by the senate, with one student member selected annually by the board.

Length of terms is also a matter of concern. Ideally the board members, while appointed as a product of the political process, should nonetheless be as free of politics as possible during the period of their service. To achieve this the terms should be staggered so as to extend beyond the term of a single governor and should be subject to reappointment. While the State placed emphasis upon the Governor's desire to achieve geographical representation (through each congressional district being represented), it is far more important to select individuals who have the background, experience and commitment to make the plan for racial integration work, wherever they are from. What is needed are individuals who believe in the need for racially integrated, quality higher education for Louisiana. Good people are always in short supply, but they must be found if this plan is to be implemented successfully.

The Legal Issues Surrounding Racial Quotas on the Board

It is difficult to understand the legal objections raised by the United States to the proposal for mandated minority representation on the new board. In situations where unconstitutional discrimination has been judicially determined, courts are free to craft remedial solutions that involve racial quotas. In *United States v. Paradise*, 480 U.S. 149 (1987), for instance, the Supreme Court approved a district court plan aimed at remedying past discrimination which mandated one-black-for-one-white promotions in the Alabama Department of Public Safety. *See also Sheet Metal Workers v. EEOC*, 478 U.S. 421 (1986) (approving a court-ordered remedial plan mandating a quota for nonwhite membership in a union). Moreover, in the recent case *City of Richmond v. Croson*, 109 S. Ct. 706, 729-30 (1989), the Court, while striking down a legislative affirmative action plan, reinforced the idea that narrowly-tailored race-conscious remedies are proper when supported by a finding of past unlawful

discrimination. In his *Croson* concurrence, Justice Scalia noted that "we have permitted federal courts to prescribe quite severe race-conscious remedies when confronted with egregious and persistent unlawful discrimination." 109 S. Ct. at 736. That is what we have here.

Certainly this case involves a previous finding of unlawful discrimination. Indeed, in its August summary judgment ruling, the District Court made explicit findings that: (1) there is a history of *de jure* segregation in the Louisiana state university system; (2) this *de jure* segregation is the cause of the current dual higher education system; and (3) the seven-year experiment under the consent decree has demonstrated that an effective remedy for the dual system will require "drastic" action. United States v. Louisiana, 692 F. Supp. 462-46, 653-58 (E.D. La. 1988). Under *Croson* and *Paradise*, these findings support the use of racial classifications here in order to eradicate the remnants of segregation.

A remedial plan fixing minority representation on the single board, like that proposed by the Task Force and endorsed by the State, is also narrowly tailored to serve the compelling interest in ending segregation. First, there is no effective race-neutral alternative. *See Croson*, 109 S. Ct. at 728; *Paradise*, 480 U.S. at 171 ("In determining whether race-conscious remedies are appropriate, we look to several factors including the efficacy of alternative remedies. . . ."). As discussed, the creation of a single governing board is a crucial step toward desegregation in this case and yet its efficacy is threatened unless the interests of the PBIs and black students can be institutionally protected by the new board, the majority of whose constituents will be PWIs and white students. No party has proposed or suggested, and the Special Master is not aware of, any race-neutral criteria that could guarantee the protection of black interests as

effectively as mandating a substantial black membership on the board.

Second, the plan for fixing minority representation on the board is flexible and can have a limited duration. *See Paradise*, 480 U.S. at 141 ("the flexibility and duration of relief, including the availability of waiver provision," is a factor to be considered). Like all the remedial provisions of this recommended plan, the composition of the board would be mandated by court order only until the unconstitutional dual system of higher education is eliminated. Moreover, the remedial plan contains an outside time limit (five years) for the minority quota of representation on the single board, after which further court action would be required to perpetuate the quota.

Finally, the proposal for a single governing board with mandated minority representation will not impose an unacceptable burden on third parties or the relevant labor market. *See Paradise*, 480 U.S. at 171 (also considering "the relationship of numerical goals to the relevant labor market" and "the impact of the relief on the rights of third parties"). As recommended by the Task Force, the single governing board would have 17 members with some slots reserved for minority members. And no one is currently employed by the yet-to-be created board whose job might be jeopardized by a minority quota. Especially in the context of the important remedial goals of this plan, the impact of the minority quota on individuals who might otherwise be appointed as board members is minimal and would not counsel against the use of quotas.

The LSU Supervisors have argued that any quota which produces overrepresentation of blacks on the single board is not narrowly tailored to the goal of eradicating the racially dual higher education system. (Amendments to Remedial Plan Requested by LSU Board of Supervisors, at 1-2; May 9, 1989 Hearing Transcript, at 15-21.) Relying on *Paradise*, the LSU Supervisors claim that

proportional representation might be an acceptable and narrowly tailored remedy, but that no case law supports disproportional representation." *Paradise*, however, belies that assertion. As discussed above, *Paradise* involved a distinctly disproportional one-black-for-one-white promotion scheme, which the Supreme Court approved. To be sure, the *Paradise* remedy was a temporary one, designed to *increase* the number of blacks in high ranking positions (where previously there had been none) but not to achieve permanent 50 percent black presence in high ranks. 480 U.S. at 163. Likewise, here, the goal is to increase other race attendance at historically single race colleges, toward a level proportional to the state's population; overrepresentation on the single board is a temporary remedial step narrowly tailored to achieve that goal, not a goal in and of itself. As such, it is supported by *Paradise*, not undermined by it.

In sum, the proposed single board structure with an interim quota for minority membership is a constitutionally valid means to help insure that the loss of a separate voice for the PBIs will not jeopardize the legitimate educational interests of the students they represent. There are, of course, other assurances that the single board will not work to the disadvantage of historically black institutions or concerns. The mission of the board itself would incorporate those concerns and its organization will ensure that they are addressed. Moreover, the continued oversight of a monitoring committee which is also proposed as part of the plan, will assist the board in remaining on a proper course of desegregation.

Campus Advisory Committees

The use of campus-based advisory committees will help to maintain channels of communication between institution and board. These advisory committees can also be organized in a race-conscious way. The use of advisory committees needs to be carefully evaluated. Assuming

each of the state's 13 four-year colleges and four community colleges were to propose them, it must be made clear what the limits of their powers are, lest they become instruments for disaggregating rather than centralizing the control of higher education. It also needs to be shown how these committees would relate to the goal of desegregating the system. Campus-wide advisory committees, properly balanced according to race, can be helpful in implementing any desegregation decisions issued by the single board. They are close to the place where implementation must occur. They can plan a positive political role in supporting and guiding the campuses towards the proper goals established by the board. Moreover, as early warning mechanisms, they can serve to alert the system officials about problems at the campus level.

Achieving racial balance on these advisory committees is relatively straightforward for the 11 predominantly white institutions. In those cases a percentage approximating the racial breakdown of the state's citizens can be employed. But when it comes to the historically black institutions, Southern and Grambling, the question is more complex. On the one hand, it is important to recognize the special role those schools have in educating black citizens long before those citizens were eligible to enter the state's white institutions. On the other hand, to maintain their advisory committees in a racially imbalanced way only serves to perpetuate racial stereotypes that make it more difficult to integrate those campuses. It would seem sensible, therefore, to retain for the next five years a majority of black representation on advisory committees in these two institutions, but ask a large minority of whites to serve on them as well. In its comments on the Recommended Remerial Plan, Southern has requested that, assuming there are an odd number of members on the advisory committee at a PBI, the number of black members could exceed by one the number of white mem-

bers. (Southern Response to the Special Master's Recommended Remedial Plan, at 8.) That seems a reasonable solution, at least for the next five years. The racial composition of the advisory committees will have to be revisited by the board and the monitoring committee after that time.

B. *Classification of Institutions and Selective Admissions Standards*

The Task Force in its report adopted by the State discussed reclassifying the public institutions based on mission and the Court in its suggested remedies mentioned the institution of higher admissions requirements. These remedies are related and will be discussed together, although it is possible to separate them in the sense that research or doctoral institutions can be open rather than selective admission institutions.[9]

The crucial issue regarding these remedies remains their relationship to the goal of integrating Louisiana higher education. In terms of classification (sometimes called "tiering") there is less contention over—and less evidence about—its relationship to desegregation. Nonetheless, organizing institutions hierarchically by degree and program offerings has several obvious advantages for resource allocation and quality control that can bear on desegregation goals.

LSU A&M as a Flagship Institution

The State/Task Force Plan urges "flagship" status for LSU. That status is not contested by any of the plans or other submissions by the parties. Several witnesses support this idea. William E. Davis, chancellor of the Ore-

[9] Dr. Conrad indicated that some large state universities, such as the University of Kansas, have undertaken substantial graduate and research programs while retaining open admissions. (Hearing Testimony, at 214-15.) That course of action will not be recommended here as is more fully explained at pp. 64-66 *infra*.

gon State Higher Education System (an LSU witness), stresses the importance of a major research institution in the state university system and says that only LSU has the potential to fill that need (Davis Witness Statement, at 1-12). Marian Gade (a Southern witness) confirms that need for every state to have a premier research institution (Gade Deposition, at 151-52). Other witnesses close to LSU, and therefore more interested in the outcome, also testify to the need to preserve or implement LSU's flagship status.[10]

The relationship between classifying or tiering public institutions and the desired goal of desegregation is an inferential one. There is no obvious and necessary connection between organization and desegregation. Thus how state universities are organized can be viewed as an educational matter not rising to constitutional levels. However, there is much to be said for structuring higher education to enhance quality and then ensuring that minority students participate at all levels of the system. A system which produces better educated students will benefit all concerned. As the Court noted in this case: "The interaction of the better minds, the exchange of various thoughts and aspirations, and the contacts made at college are factors to be considered, for these benefits carry over to the business world. In other words, there is something to the old boy network." 692 F. Supp. at 657.

Certainly LSU qualifies as Louisiana's network in that regard and so long as black students are adequately represented (a subject to be discussed later) the creation of a flagship institution can be a positive force for campus

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[10] *See generally* Bogue Witness Statement, at 2-3. LSU has also submitted witness statements from numerous LSU faculty and administrators testifying to the high quality of programs and facilities at LSU. *See* Witness Statements of Carpenter (architecture); Hay (computer information systems); Henry (business administration); Hogan (libraries); Kraft (computer science); McLaughlin (engineering); Midgely (social work); and Smith (education).

and, as important, societal integration. Students, graduate and undergraduate, who attend that institution must ultimately compete together for positions in the world of business and commerce. Interracial friendships formed there will persist beyond the classroom. Quality graduate programs and research endeavors open to all are in the state's interest and therefore in the interests of this Court and the United States.

There is another reason why flagship status for LSU makes sense. It allows the state to rationalize the missions of all of its four year (and even two year) institutions. To be placed at the top of a pyramid implies a middle and a bottom.[11] Establishing a hierarchy of schools in other words aids all of them to define their missions and to gain public acceptance. The Plans suggest a second tier of institutions to follow LSU's "research" status. These are labelled "doctoral" institutions according to generally accepted national classification schemes (*see* Original State Plan, at 12-14 (discussing classification systems of the Carnegie Commission and the Southern Regional Education Board)). The State/Task Force Plan lists UNO, USL and Louisiana Tech in this category and possibly Southern-Baton Rouge, assuming that institution can reconcile doctoral status to its open admissions role or is willing to change that role. (*Id.* at 16.) The Southern University Plan includes its Baton Rouge campus along with the other three within the doctoral category also. (Amended Southern Plan, at Attachment N.)

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[11] The use of the pyramid analogy is not without difficulty since it may be taken to imply a quality as well as a mission differentiation measure. What is intended here is to refer to missions alone in the hierarchical sense, but not to imply a quality judgment about those missions. In other words a school with only a four-year undergraduate mission (or even one with a two-year mission) may do as good or even a better job of educating undergraduates than a research or doctoral university. This has long been true in the private sector, where small colleges traditionally produce graduates of high quality.

There is no disagreement among the parties about this step either. The need for this second tier is made clear from the organization plan itself. It is critical for the state to limit those institutions where doctoral level work is to be undertaken in order to organize resources, faculty and programs in an efficient way.

SUBR as a Doctoral Institution

From a desegregation perspective, it is imperative that SUBR be included among the four doctoral institutions. In order to reduce and ultimately eliminate its racial identifiability, SUBR must have and be viewed as having a valuable educational mission. Thus the points made by the Southern Plan about the need for doctoral level programs for the Baton Rouge campus are well taken. (Amended Southern Plan, at 26, 52.) However, with new status goes new responsibility. As is discussed in the section on admissions standards, SUBR cannot easily have its open admissions role and become at the same time a true doctoral institution. In order to attract white students, SUBR must be perceived to be equal educationally to the other doctoral institutions. This is true not just for undergraduate students but for graduate students as well. Quality programs are to be expected of doctoral institutions. They must survive rigorous peer review and accreditation standards to be permitted to award higher degrees. Once this status is achieved and recognized, it becomes one of the best techniques for eliminating the racial identifiability of SUBR. Perceptions of quality will offset and overcome perceptions based on race if given a chance. A student's self interest is one of the best forces for combatting his or her racial prejudices.

There is another reason why SUBR as a doctoral institution, and indeed why the tiering concept in general, is pro-desegregation. Many black students should take doctoral level training. The need to produce black faculty is a critical aspect of the desegregation process. By

"growing their own", a concept introduced in Wisconsin according to the testimony of Dr. Trani (Trani Witness Statement, at 17), a state can help overcome the dearth of black Ph.D. and doctoral candidates in higher education. By organizing itself to maximize quality graduate education, Louisiana will be better situated to take advantage of this opportunity. SUBR has a vital role to play in this process.

The remaining four-year institutions are labelled "comprehensive" by the State/Task Force Plan.[12] As a rule these institutions should not offer doctoral programs.[13] They are: Grambling, LSU-S, McNeese, Northeast, Northwest, Nicholls, Southeast, and SUNO. While the Southern Plan proposes further tiering among these in-

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[12] The State/Task Force plan also identifies a category of professional institutions: the LSU Agricultural Center, the LSU Medical Center and the LSU (Paul M. Herbert) and Southern Law Centers. These institutions are organized in conjunction with the universities to which they relate and are expected to have appropriately designated missions and admissions standards.

[13] Several institutions that would be classified as comprehensive universities currently offer discrete doctoral degree programs. For instance, Grambling offers a doctoral degree in developmental education, Northeast offers a Ph. D. in Pharmaceutical Science and SUNO offers a Ph.D. and Ed.D. in Special Education. Grambling and Northeast have been especially vocal in arguing that these programs be maintained notwithstanding any reclassification or clarification of their school's mission. (*See, e.g.*, Proposed Amendments to Recommended Remedial Plan from the Grambling Alumni, at 1-4; State of Louisiana Suggested Amendments to Recommended Remedial Plan, at 3.) Such programs, like all others, must be studied by the board; however, so long as they are educationally sound and consistent with the desegregation goals of this plan, discrete doctoral programs need not be eliminated solely to conform to the school's new categorization.

Northeast has also requested to be considered by the board for status as a doctoral institution more generally. The board should study the offerings of doctoral and non-doctoral institutions as well as the demand for doctoral programs to determine if additional universities such as Northeast should be categorized as doctoral universities.

stitutions, there seems to be general agreement by the parties with their missions as they now stand. The board and President should explore the necessity for further tiering among these schools in due course, having in mind resource constraints as well as racial balance issues. The very purpose of tiering is to reduce duplication, not to encourage it. (See Chart 3 *supra.*)

The Relationship of Admissions Standards to Tiering and Desegregation

The assumption underlying the State Plan is that the institutional hierarchy created in terms of graduate program offerings will carry over to selectivity in undergraduate admissions. For example, LSU admissions would be limited to the top 25 percent of Louisiana high school graduates (as determined by high school class rank, grade point average, college preparatory course work and minimum ACT scorces) and the doctoral institutions would be limited to the top 50 percent. The comprehensives would be either less selective or open admissions.

The question of admissions standards cannot be understood without recognizing the current situation. In theory, all of Louisiana's higher education is currently on an open admissions basis. Louisiana high school graduates are free to enter the institution of their choice.[14] But LSU has recently embarked upon a modest selectivity program which has served to limit its admissions. The LSU experience is central to the analysis of the relationship between admission standards and desegregation.

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[14] In practice, however, since some institutions are more popular than others, one would think that the chances of gaining admission might vary considerably in any given year. But the State assures the Master that, in the last five years, application rates and acceptance rates have been identical for Louisiana's four-year institutions.

Former LSU Chancellor Wharton in his testimony at trial discussed how LSU decided to require a college preparatory curriculum for the first time in 1988 after alerting high schools to the changes four years earlier. As a result its entering class was reduced from 4500 to 3700 students. But those students were better prepared for college work. Indeed Wharton testified that the high school curriculum completed by those 3700 entering students had been completed by only *one* entering LSU student five years earlier. (Wharton Deposition, at 97-98.) That is eloquent testimony to the value of demanding more from the high schools. Moreover, average Act scores for entering students at LSU in 1988 were uniformly and significantly higher: overall ACT scores averaged 21.3, up from 19.6 in 1981, and average scores for black students were 18.0, up from 13.2 in 1981. (Hargrave Witness Statement, at 22-23.)

Thus the importance of relatively modest admissions standards (coursework requirements but no rank in class or ACT minimum) served to produce better prepared applicants for admission. It in effect forced the high schools to respond to the preparation challenge. And more importantly the number of black students entering LSU was not lessened; Board of Regents data show that 8.2 percent of the 1988 entering class was black, which actually marks a small increase over the historical percentage of black students at LSU. (*Compare* Wharton Hearing Exhibit 6B *with* Chart 1 *supra.*)

The current practice of open admissions to all four-year institutions is counter-productive, both in terms of educational objectives and racial integration. The objective is not simply to admit students into college, but to educate and graduate them. In terms of undergraduate degree productivity, the Louisiana open admissions system is a failure. Dr. Tremblay, Coordinator of Research and Data Analysis, Board of Regents, submitted a chart which analyzed the status of students after six years who

entered as freshmen in fall 1982. Systemwide only 33.2 percent of the 21,470 students who entered higher education in 1982 had received bachelors and associates degrees after six years of attendance. This is far below the national average of 44.9% for public universities. (American Council on Education, Digest of Education Statistics, at 249 (1988) (percentage of students entering in 1980 who graduated within the following six years).)

But Tremblay's data also show wide variance among institutions. In referring to the Tremblay data (which are reproduced as Chart 2 *supra*) certain conclusions can be drawn. The open admissions system is just that. Students enter higher education (both four and two years) easily but do not readily leave with degrees. Moreover, that impact is particularly acute at institutions that have a large black population, notably SUNO. According to Tremblay only 8.5 percent of 1982 SUNO freshmen graduated after six years. While Dr. Spikes on behalf of the Southern Supervisors introduced figures to challenge Tremblay's statistics, even under her figures the total for the same entering class did not exceed 12 percent in 1988-1989. (Spikes Hearing Exhibit 1.)[15] Admittedly, as Dr. Spikes explained, the economic circumstances of SUNO students makes them susceptible to part time and occasional attendance (Spikes Hearing Testimony, at 260-62). But the fact remains that unlike Grambling (which has a graduation rate of 42.6 percent) or even SUBR (25.3 percent), SUNO is unproductive as a four-year degree institution. Moreover, Southern's own witness, Dr. Blake, testified that:

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[15] In a post-hearing motion to strike, the Board of Regents challenged the statistical validity of the Southern submission. Although the Board of Regents makes some good points, it is unnecessary to resolve the question here because the statistical differences are not significant enough to undermine the essential point.

> A good graduation rate four years [after entering] would be around 30 percent, about one-out-of-three four years later; then five years later it should go up to over 40 percent; and over a six-year period, it should top out at about 55 percent. Those would be respectable figures in terms of the varieties of attrition studies that I have seen. (Blake Deposition, Vol. II, at 49.)

It is difficult to escape the conclusion on the data presented that SUNO is in effect a four-year college in name only.

But even LSU-A&M which admits the strongest students overall on an open admissions basis [16] does not have impressive productivity results. Only 44.9 percent of its students who entered in 1982 had taken degrees after six years. Thus the leading institution in the state failed to graduate one half of its students. Although this graduation rate corresponds to the national average for *all* public universities (*see* p. 73 *supra*), it is below what one would expect for a "flagship" school.

In a state where almost 50 percent of the entering four-year students need remedial (developmental) education,[17] it is not likely that degree productivity will be

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[16] Wharton's testimony contains charts that show LSU to have the highest GPA's and ACT scores among high school students entering Louisiana public higher education. (Wharton Hearing Exhibit 6A.)

[17] *See* Tremblay Hearing Exhibit 2, which shows that 48 percent of fall 1988 four-year college students needed developmental education. The figure was 77 percent for black students. Interestingly the percentage of those needing developmental education was also 48 percent for students at two-year colleges, suggesting that four-year schools provide as much if not more remedial education that two-year schools. This also points to a hidden cost of the open admissions system which fails to organize students by academic ability. It creates programmatic inefficiencies since all of higher education must devote resources to developmental education.

high. But the question is whether making some institutions more selective will have a positive effect on this situation. Getting students ready for college is the job of high schools and the more colleges demand of students who enter, the more the high schools will deliver. Drs. Trani, McTarnaghan and Wharton, all State witnesses, testified that state universities have an important role to play in setting the curriculum of high schools. (Trani Deposition, at 29; McTarnaghan Deposition, at 33-34, 80-81; McTarnaghan Hearing Testimony, at 21-24, 28-30; Wharton Hearing Testimony, at 189-93.) But Dr. Gary Orfield, a Southern witness, maintained that the high schools cannot respond if the framework and resources are not in place. (Orfield Deposition, at 25-30.) Dr. Wharton's trial testimony confirms the potential colleges have to have to reform high school curricula.

If LSU becomes selective its degree productivity rate should rise considerably. Truly selective public institutions nationally graduate around 75 to 80 percent of the students in *five* years. It might be thought that LSU's selectivity would only serve to concentrate the good students who are currently spread around the system into one institution thereby lowering every other institution's degree productivity levels.

But that need not follow. If the four proposed doctoral institutions also implement selective admissions standards as the State plan suggests (in SUBR's case over time) that will place further demands on students to perform well in high school in order to enter those schools. Evidence also shows that students rise to challenges. This has been the experience in Florida according to the testimony of Dr. McTarnaghan, a State witness. The more the Florida system demanded of high school graduates, the more the high schools delivered. The result has been a significant increase in SAT scores over a five-year period at no reduction in minority enrollment. (McTarnaghan Hearing Testimony, at 21-

23, 28-29.) Moreover if the other "comprehensive" institutions remain open to those who have passed the proper core curriculum, without regard to their class rank and ACT averages, then there will be little loss of access to higher education at a real gain in preparation and degree attainment.

The Racial Impact of Selectivity Techniques

The impact of selective admissions on black students—and hence on the desegregation remedy the Court must shape—remains problematic. If the selectivity index is driven by ACT scores then black students will appear in significantly smaller numbers in selective institutions like LSU. (Wise Witness Statement, at 15-24.)[18] However, if the selection index is based primarily on high school grades, courses and rank in class the differences can be ameliorated. While no statewide data on rank in class by race are available, based on the racial composition of many public school districts it is logical to conclude that many black students will be in the upper ranks of their respective high school classes.

Similarly, there is no reason why these same high schools cannot add the courses necessary to prepare students for college. Since the strict use of ACT scores would tend to reduce the number of blacks who would gain admission to selective institutions, the ACT should be used in a way that will produce the least negative impact upon black enrollment. The useful data contained in the ACT can be employed in a more positive rather than negative fashion. Students with high ACT scores (black or white) should be able to use them to some extent to offset lower class rank of GPA perform-

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[18] Wharton's data show the average ACT score in 1987-1988 among whites to be 18.6 and blacks to be 12.7. The high school grade point averages for whites in 1987-1988 was 2.8 and for blacks 2.54. (*See* p. 20 *supra.*)

ance (with college preparatory courses still being required), but minimum ACT scores should not be required of all students.

In this fashion the ACT's impact on the desegregation goal can be minimized without eliminating it as a tool of admissisons analysis. The requirement for college preparatory courses should be established through a dialogue between the universities, the Board of Elementary and Secondary Education and the public high schools. As the experience at LSU shows, if such requirements are phased in over time students can be expected to take a more demanding course load in preparation for attendance at newly selective institutions.

Even under these circumstances the presence of blacks may be reduced in the selective institutions. For this reason, the State Plan introduces the notion of exceptions to the usual admissions requirements for a certain percentage of entering students. The State Plan presumes exceptions of ten percent, if necessary, to attract other race students, five percent for "institutional interests" and an unspecified percentage for student athletes. All selective institutions face the challenge of accommodating some students whose scores on objective tests or class rank do not measure up to the rest of the class. Whether it is alumni children, students of special talents (including athletes), students of influential and/or generous citizens, or minority students, exceptions are made nationwide. *See generally Regents of University of California v. Bakke*, 438 U.S. 265, 316-25 (1978) (Opinion of Powell, J.).

Certainly Louisiana's newly selective institutions need not be any different. As a matter of remedy, however, it is critical that blacks (or whites in the case of SUBR) be given consideration in this process. There is little need to worry that such exceptions will be made with regard to race in athletic admissions; but exceptions should

also be made in terms of minority students more generally. The United States and its witness Conrad maintain that any such exception should be "race neutral" (Amended United States Plan, at 11; Conrad Hearing Testimony, at 211-13). It is difficult to understand what is meant by that phrase if the goal is to create a racially diverse student body. Thus, for legal reasons expounded upon in more detail in the discussion of minority participation on the single board (pp. 56-51 *supra*), the exceptional category of ten percent of minority students is justified.[19] This does not mean of course automatic admissions for minority students of up to that percentage. Their high school records and test scores will also be relevant to determining whether they have a likelihood of success at the institutions they choose. The important point is that, if this does occur, the percentage of black students at LSU would exceed current levels at the same

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[19] Like the minority quota for the single board, the ten percent admissions exception for minority students is narrowly tailored to serve the compelling interest in eradicating Louisiana's racially dual higher education system. Although the United States has suggested a race-neutral admissions exception, it has not explained how such an exception would operate and no party has explained how a race-neutral exception would serve the overriding goal here: increasing the number of other race students at the PBIs and PWIs. The Master is convinced that only a race-*conscious* remedy can achieve that goal. Moreover, the admissions exception would, by it nature, be flexible and have a limited duration. Even with a mandated ten percent set-aside, the single governing board and individual institutions would have wide latitude in determining how the admissions standards would be structured in general, how the standards would be waived or altered for minority students, and which students would be selected under the exception. The admissions exception would also be used only until each university achieves a constitutionally-acceptable level of other race enrollment. This flexibility, combined with the compelling purpose underlying the admissions exceptions, more than justifies the minimal impact the exceptions would have on students denied admission but who, in any event, could inevitably be accommodated at another state university.

time the institution moves in a more selective direction. That is the optimum solution.

This category of exceptions may also require some remedial or developmental education at the selective institutions. While they will generally be out of that business due to their selectivity, there may be more need for that effort to continue on a more focused basis. As a general proposition, however, developmental education should become a priority of the community colleges, whose role will have to be expanded in light of the tiering concept that the plans recommend.

To make a tiered system of higher education work, many centralized decisions must be made. This ties the single board recommendation closely to the tiering and admissions standards recommendation. Witnesses have emphasized the need for enrollment management since one cannot know in advance precisely what changing roles and standards will do to the student profile or existing institutions. Dr. Conrad supports the use of enrollment ceilings both to ensure program quality and desegregation (Conrad Witness Statement, at 34; Conrad Deposition, at 46-52). Dr. Trani also emphasizes the importance of enrollment management (Trani Deposition, at 171) and Dr. Richardson notes favorably the California system where qualified students are assigned by the system to particular institutions (Richardson Deposition, at 24-25).

Some of these issues will be addressed here (especially the issue of duplication and enrollment management) but no precise answers can be given at this stage of the process. Creating a new system requires that the system itself make some of these crucial choices.

C. *The Role of a Community College System*

As part of the tiering proposal, the State Plan endorses the creation of a community college system to insure an outlet for open admissions into college. The Court also

recommended consideration of the concept of a community college system. Louisiana has never embraced community colleges as an integral part of its higher education system and as a result its community colleges are relatively undeveloped as an educational resource. (*See* Witness Statement of Bill J. Priest, chancellor Emeritus of Dallas County Community College, an LSU witness, at 7-8.) Louisiana ranks 48th among states in the number of higher education institutions in relation to college age population largely because of the paucity of community colleges. Moreover, community colleges serve a non-traditional age population which is largely unserved in Louisiana, even though it has a very low high school completion rate which accentuates the need for lifelong learning. (*See* Trustees' Post Trial Memorandum, at 3.)

There are four community colleges that are defendants in this case: Delgado (New Orleans); LSU-Eunice; LSU-Alexandria; and Southern-Shreveport. Their total enrollment is about 12,000 students of whom about 3,800 or 32 percent are black. In addition Bossier Parish Community College and St. Bernard Parish Community College are under the aegis of the Board of Elementary and Secondary Education.[20]

The State Plan calls for the establishment of a community college system to be governed by the single board (Original State Plan at 17-19). Southern makes no recommendation with regard to the system idea but does favor a merger of SUNO and Delgado. This approach is

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[20] The Bossier Parish and St. Barnard Parish Community Colleges have been granted summary judgment by the Court from this case. *See* 692 F. Supp. at 658. The future of those institutions and the Orleans Regional Vo-tech School must be determined by any newly created community college system. It would, of course, be advantageous to incorporate those schools into the new unitary and comprehensive community college system.

also supported by other witnesses.[21] The need for a systemic approach to community colleges stems from the tiering concept. Community colleges are necessary to insure remedial education of those who might be excluded from the less accessible four-year college system. (Wise Deposition, at 55-56.) Moreover, the creation of a community college system ensures a system that is racially balanced. (Parnell Deposition, at 22.) The system created from among the existing independent community colleges would have had 12,351 students in 1988, of whom 31 percent were black.

The Dumping Ground Charge

But the racial balance of community colleges can also be viewed as a weakness. Several witnesses (Dr. Orfield and Conrad) argue that community colleges are dumping grounds for black students who do not transfer into four-year institutions. (Orfield Witness Statement, at 2-4; Orfield Deposition, at 35-37; Conrad Deposition, at 261-65.) This view of community colleges is sharply contested by Drs. Davis and Caillier (the head of Delgado). Dr. Caillier argued that community colleges more closely match the racial make-up of the surrounding population than do four-year colleges and that establishing a statewide community college system would "significantly increase" the number of students attending college. (Caillier Hearing Testimony, at 72-73.) Dr. Parnell testified that, of those students entering community colleges with the intent of transferring, 80 to 85 percent actually do so. (Parnell Deposition, at 22-23.)

To overcome the reality and perception of the dumping ground allegation, the transfer function of commu-

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[21] Terrel and Blake, Southern witnesses, and Beard for the Regents, all support putting Delgado under the supervision of SUNO. (Terrel Deposition, at 90; Blake Witness Statement, at 3-4; Beard Deposition, at 57.) Dr. Leslie opposes this idea. (Leslie Witness Statement, at 19; Deposition, at 120.)

nity colleges must be emphasized. Drs. Leslie and McTarnaghan discuss the success that Florida has had in using community colleges as transfer institutions. They claim that the existence of community colleges has aided desegregation at the four-year institutions. In effect the community colleges are able to prepare students for a more rigorous four-year experience. Carefully drawn articulation agreements must exist between the community colleges and four-year institutions to ensure that the transfer possibilities become a reality. It is the task of the new system to establish these agreements.

Ideally, as Parnell has stated, in states (like Maryland) where there is a well-developed community college system a greater percentage of people attend college and obtain degrees. Parnell Deposition, at 7-18.) Moreover, the mission of community colleges extends beyond the production of two-year college degree recipients (the transfer function); as Dr. Caillier testified, community colleges are also designed to offer occupational and technical education opportunities. (Caillier Hearing Testimony, at 79-80.) In some respects, these opportunities are as important to the community colleges as the transfer function. Jobs in the economy of Louisiana require skills that community colleges are often in the best position to provide. Articulation agreements between business and industry and the community colleges may be as important to the state to create as those between the community colleges and universities. Qualifying people to hold jobs is a major function of community colleges and the mission orientation of community colleges can, therefore, have a positive effect upon minority employment opportunities beyond the production of transfer eligible graduates.

The Need for New Campuses

To establish a system of community colleges implies access in all parts of the state. The witnesses have dis-

cussed certain areas where gaps exist, notably Baton Rouge.[22] While no statewide system of community colleges can ignore the Baton Rouge area, especially if the four-year institutions there restrict their admissions, the creation of any new community colleges can be left for future determination.

The present task is to organize those community colleges that already exist into a coherent system. Initially, this requires a review of all two-year programs that are part of four-year institutions. In general, such programs should be coordinated with or even absorbed into the community college system. At oral argument concerning the Special Master's original Recommended Remedial Plan, however, counsel for the Board of Trustees argued that certain two-year offerings by four-year institutions are not appropriate for inclusion within the community college system. (May 9, 1989 Hearing Transcript, at 23-25.) For instance, Louisiana Tech offers two-year courses under contract with Barksdale Air Force Base—courses that could also be provided by an out-of-state university of the Air Force's choosing. (*See generally* Witness Statement of David Grindstaff.) Northwestern offers an associate degree in nursing—a degree that could not easily be combined with the offerings of the proximate community college, SUSBO, because SUSBO does not have a nursing program. With respect to these programs, the best course is for the new board to conduct its own review to determine if the courses should be incorporated into the community college system. To guide the board in this endeavor, it should be noted that, so long as the programs are adequately supported, serve

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[22] Dr. Wharton, for example, supports the creation of a community college in Baton Rouge, based on the model of the community college in Tallahassee, Florida, where both a PBI (Florida A&M) and a PWI (Florida State) exist. (Wharton Deposition, at 100-01.)

the educational needs of their community and do not undermine the coordinated community college system, discrete existing two year programs may be retained at otherwise four-year institutions.

SUNO is a special case in this regard. It offers seven two-year degrees in addition to its four-year B.A. program. These degrees according to Dr. Spikes are currently underutilized or even inactive.[23] Some witnesses have also testified as to the inappropriateness generally of including two-year programs within four-year institutions, due to the different objectives of the faculty and students. (*See, e.g.*, Conrad Hearing Testimony, at 203-07.) Based, apparently, on these considerations, the parties are in rare agreement that the two-year programs at SUNO should be discontinued. The State has proposed that SUNO become a four-year comprehensive university. (Original State Plan, at 20.) The Board of Trustees, on behalf of Delgado, has argued that Delgado should be *the* community college in New Orleans, operating in conjunction with the offerings of Orleans Regional Vo-Tech and St. Bernard Parish Community College but not SUNO. (Trustees Post-Trial Memorandum, at 5.) The United States and the Southern Supervisors say that SUNO should be "enhanced" to four-year status and its two-year programs transferred to Delgado. (United States Response to the Special Master's Recommended Remedial Plan, at 16; Southern Response to the Special Master's Recommended Remedial Plan, at 12.)

The Special Master has some trepidation in reclassifying SUNO, with its extraordinarily low productivity

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[23] The Board of Trustees Post Trial Memorandum notes that SUNO produced 132 graduates from its seven two-year programs over the last six years while Delgado produced 3905 graduates from its 49 associate degree programs. (Trustees Post-Trial Memorandum, at 4-5.)

(*see* discussion at pp. 73-74 *supra*), as a four-year liberal arts university. Nevertheless, it is apparent that SUNO's two-year role has been no more successful than its four-year mission. Moreover, SUNO's two-year offerings overlap with Delgado's whereas SUNO will be the only open admissions four-year university in New Orleans, once UNO adopts selective admissions. There is the hope that creating this new niche for SUNO will, if the reorientation is conscientiously pursued by the board and the SUNO administration, lead to improved degree productivity. The board should, therefore, review SUNO's two-year degree offerings and either terminate them or transfer them to Delgado.

Organization of the System

The head of the system of community colleges (who might be called a system vice-president for community colleges) would report directly to the president of the University of Louisiana System. While the exact title of the new system should be left to the board to resolve,[24] it might be designated the Louisiana Southern Community College System (LSCCS), with each campus simply adopting its geographic location (*i.e.*, LSCC-A, LSCC-E, LSCC-S). Provisions might be made to retain Delgado's name (*i.e.*, LSCC-Delgado). The system vice-president

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[24] This report uses various names and titles, including "University of Louisiana System" as suggested by the State Task Force, for individuals and institutions within the reorganized system of public higher education. By and large, such titles are not vital to the desegregation remedy proposed herein; the titles are thus suggested and the new governing board should be free to craft different titles as it chooses. An important caveat is, however, in order: titles selected must be consistent with the remedial goals of this plan and thus should reflect a reorganized and *unified* system of public higher education. It would not be proper, for example, to call the new system the "Louisiana State University System," implying that the existing LSU System had survived and that other institutions had been placed under its control.

for community colleges would name, with board approval, each of the community college campus chancellors. Since this vice-president would report to the president of the system, the community college system would tie into the university system and its goals and mission would be clearly articulated within that larger framework.

The new system of higher education absorbs each of the former institutions, whether two-year or four-year, on an equal basis. Although LSU A&M and SUBR retain some distinction within this new system because of their historic land grant status (and because of LSU's flagship status), they are no longer "systems." Nonetheless, they are the only two institutions which have formerly separate graduate and professional schools reporting to them. This is done for ease of organization only. Under the new organization scheme, only the community colleges may be said to be a "system" within *the* system.

The vice-president for desegregation compliance reports to the president but also has direct access to the campus units (a "dotted line" relationship). This is to insure that the special status and role of that officer in the organization is properly understood and implemented.

It is now possible to present the new system of higher education in terms of a rudimentary organization chart.

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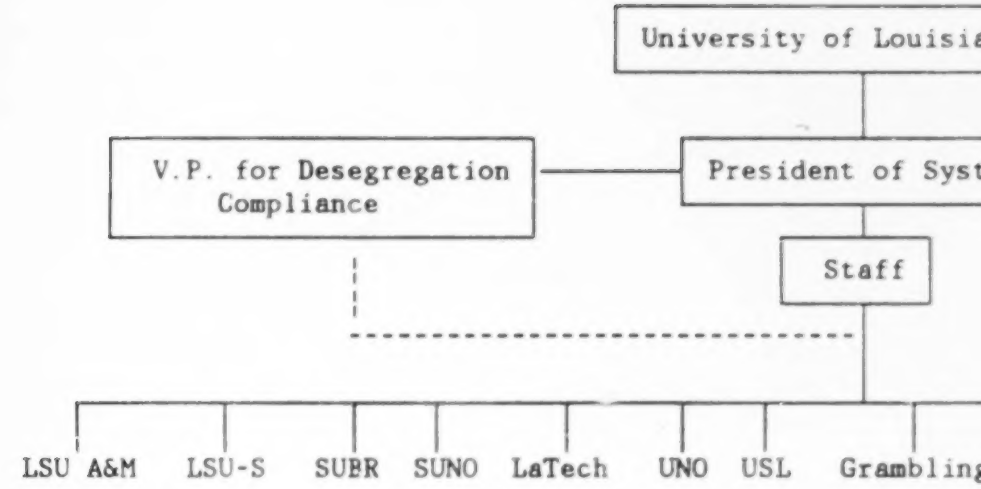

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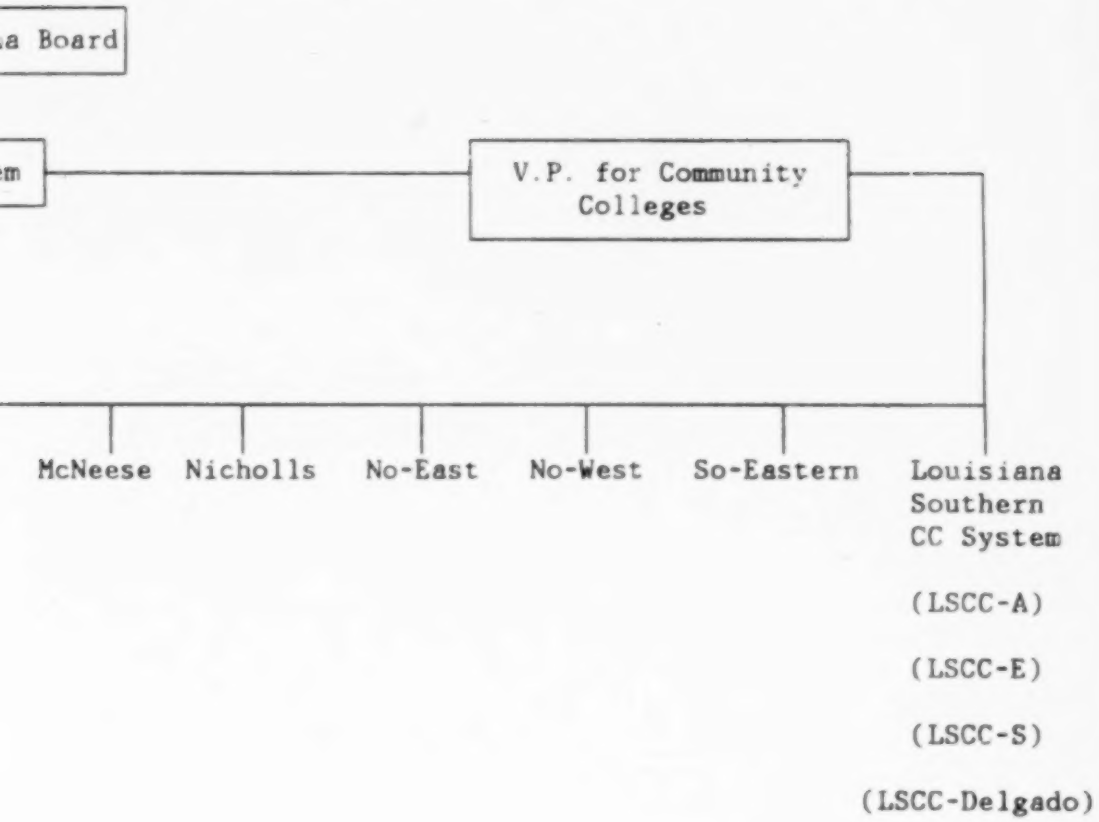

D. *Program Duplication and Program Transfers*

The Court in its list of suggested remedies urged the parties to deal with the problem of duplicative programs, especially by institutions in the same vicinity. The plans submitted by the parties addressed this issue and the related one of program transfer. The State Plan initially submitted in November 1988 proposed certain programs primarily involving Louisiana Tech and Grambling, from which its amended plan backed away. Southern's plan urged program transfers and the establishment of certain exclusive programs on its Baton Rouge campus. The Grambling Alumni Plan dealt with program transfers as well.

Before dealing with these suggestions in detail it is necessary to relate the issue of program duplication and transfer to desegregation. The evidence in this case demonstrates that there is more program duplication in Louisiana than is desirable from the point of view of educational efficiency. Dr. McTarnaghan shows how Louisiana has more degree programs in many areas than does Florida, even though Florida is a much larger system and state. (*See* chart in note 7 *supra*).

McTarnaghan attributes much of this program duplication to the lack of a single board with adequate authority to initiate or terminate programs. He notes that excessive duplication costs money and renders the programs less viable from a qualitative perspective. Moreover, McTarnaghan also suggests that duplication permits schools to cater to students of one race (McTarnaghan Witness Statement, at 9), thereby hindering desegregation goals. Other witnesses, notably Conrad, confirm the view that program duplication is excessive in Louisiana and that it fosters racially identifiable schools (Conrad Witness Statement, at 44-46).[25]

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[25] Joe D. Smith, Kerry Davidson and James Wharton testified generally that program duplication results in wasted resources

Several witnesses testified to the value of selective transfer of high demand programs to promote desegregation. Elias Blake, a Southern witness, argued in favor of program transfers in Florida as success stories in promoting desegregation (Blake Deposition, Vol. I, at 84-86, Vol. II, at 78-80) and cited examples of exclusive program assignments at PBIs. Several other witnesses, however, said that studies of college choice show that students select colleges, not programs, and that they are not likely to transfer when the program does.[26]

It is difficult on the evidence presented to conclude with confidence that program transfers will work. However, it is clear that duplication of programs can have a stultifying effect on desegregation. Therefore, it is imperative that the board take as one of its first missions the reduction of duplicated programs, especially where they involve proximate institutions. To some extent, this assignment is tied to the tiering proposal that the board must also implement. However, tiering involves primarily graduate level programs and much of the duplication currently exists at the undergraduate level. (*See* McTarnaghan table in note 7 *supra*). In terms of the desegregation data

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which is especially intolerable in a time of fiscal crisis. (*See* Smith Witness Statement, at 5-6; Davidson Witness Statement, at 4-7; Davidson Deposition, at 28-30; Wharton Witness Statement, at 1-5.)

[26] Donald Smith, an LSU witness, examined some proposed transfers in Louisiana and concluded that they were unworkable (Witness Statement, at 16-19; Deposition, at 19-34); he also related the example of his own unsuccessful attempt at program transfer in Wisconsin (Deposition, at 66-71). David Wise, another witness for LSU, testified concerning factors affecting student choice, concluding that transfers between dissimilar schools will not work because students want to go where other students have similar backgrounds regardless of program offerings. (Witness Statement, at 30-31; Deposition, at 52-54.) Cameron Fincher, a State witness, testified that program transfers have not worked in Georgia, among other things because programs are often tied to their physical facilities. (Witness Statement, at 5-6; Deposition, at 6-24.)

in this case, undergraduates are a critical aspect. The number of students involved is far larger and the impact of enrollment choice is likely to be more pronounced.

The Situation in Legal Education

There are two state supported law schools in Louisiana, Southern Law Center and the LSU Paul Hebert Law Center, both located in Baton Rouge. In terms of racial identifiability, they present remarkably different pictures. Southern Law is desegregated with a student body 58 percent black and 42 percent white and a faculty (including part-time) which is virtually 50/50. (*See* Witness Statement of B. K. Agnihotri, Chancellor, Southern University Law Center). LSU Law Center on the other hand has a minuscule percentage of black students. During the period of the consent decree it ranged from 1.9 percent to 0.8 percent. In 1988, it was only three percent. Legal education for blacks is particularly important because the ratio of black lawyers to the black population is very low [27] and lawyers are often recognized as the access point to political and economic power.

The issue for the Court becomes how better to desegregate LSU Law School, without undermining the racial balance that Southern Law School has achieved. On the surface, a merger of the two institutions with identical programs which exist virtually side by side might seem desirable; the programmatic difficulties of institutional merger in the university context would be greatly lessened since both institutions award only a single degree (J.D.). But even in the less complicated setting of legal education, merger would involve vastly different institutional goals and faculty outlooks, as well as levels of student achievement, and it should not be resorted to unless other

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[27] A 1977 study appended to Chancellor Agnihotri's witness statement notes that while the ratio of lawyers to population overall in Louisiana is 505:1; it is 6,166:1 for black lawyers to black Louisianians.

approaches fail. The Louisiana bar passage rate at LSU has averaged about 90 percent over the last five years, whereas at Southern Law it is under 50 percent.[28] LSU Law School is a more successful law school from that perspective at this time. It should be given the opportunity to improve its production of black bar-passing graduates. The desired solution is one that increases the number of black law graduates who pass the bar from both institutions.

LSU Law's low percentage of blacks seems to be a function of an admissions policy that makes no effort to attract black applicants, since it is significantly below the percentage of black undergraduates at LSU-A&M and the number of blacks at the state's two private law schools. Moreover, those few blacks who do graduate from LSU Law School succeed in passing the bar (of the 18 black students at LSU since 1982-1983, none has failed the bar). Affirmative action programs that set goals like the new admissions standards at LSU-A&M would seem an appropriate place to begin the desegregation of LSU Law School.[29] A 10 percent category of admissions exceptions whose purpose is to increase the diversity of LSU Law School and the number of black graduates

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[28] The Southern bar passage rate is probably influenced by the higher success rate of its white students. However, even the passage rate of Southern white students is not as high as LSU's. Moreover, the passage rate of Southern's black students appears to be increasing since 1983-1984. (*See* Southern Letter to the Special Master, dated April 6, 1989).

[29] The LSU Medical Center has done a better job of educating black students. The School of Allied Health Professions and the School of Nursing in the period 1980 to 1988 graduated over ten percent blacks. The School of Medicine, both in New Orleans and in Shreveport, during that period had between six percent and seven percent black graduates. The School of Dentistry, from 1984 to 1988, had only 2.5 percent. While licensure data are more difficult to obtain, the black graduates of LSU Medical School showed a passage to failure rate of 25 to 5, over 1984 to 1988. (*See* April 4, 1989 Submission by the Board of Regents.)

seems appropriate. LSU should also offer substantial scholarships to black students and undertake vigorous recruitment efforts aimed at black students.

In the Special Master's Recommended Remedial Plan, provisions for transfer of students between Southern and LSU law schools were proposed as another means for integrating LSU. Southern has taken issue with this suggestion, arguing that it would serve to siphon off the best of Southern's black law students, undermining Southern's successful efforts at desegregation. (Southern Response to the Special Master's Recommended Remedial Plan, at 14-15.) Southern's point has some force because, as noted above, the goal with respect to law schools is to integrate LSU without undermining Southern's success. For that reason, systematic provisions for transferring students need not be undertaken at this time, but Southern students who desire to transfer to LSU should certainly be permitted to do so. The board should, however, see that agreements are reached between the two law schools so that students at one school may take courses at the other. LSU Law's outstanding reputation in the civil law might provide an appropriate context for establishing such transfer courses. In addition, a conscious policy, consistent with law school accreditation requirements, whereby certain specialty courses are not duplicated at Southern and LSU would be a good way to encourage attendance by black students at LSU. If the ratio of black-to-white students at LSU Law School does not significantly improve over the next five years using these techniques, the board should then consider explicit provisions for the transfer of students or even the merger of institutions.

The Situation in Lincoln Parish

There are some circumstances where the parties have agreed to program transfers that should be recognized. In Lincoln Parish, Louisiana Tech and Grambling have

reached agreement on a series of program transfers, some of which were incorporated in the State's Original Plan.[30] Under the State's Plan, the following programs and majors were to have been transferred from Grambling to Louisiana Tech:

M.S., Elementary Education-Special Education

B.S., Speech, Language and Hearing Specialist

B.S., Special Education (Pre Non-Categorical Early Childhood Dual)

B.S., Special Education (Mild/Moderate Elementary Dual)

B.S., Special Education (Mild/Moderate Secondary)

B.S., Art Education

B.S., French Education

B.S., Home Economics Education

B.S., Industrial Arts Education

B.S., Music Education

B.S., Social Science Education

B.S., Communications and Theatre Education

B.S., Institutional Management-Food Production Management

B.S., Geography

B.S., Art

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[30] In its Amended Plan, the State recommended that the B.A. degree in social welfare offered at Louisiana Tech and the B.A. degree in social work offered at Northeast be transferred to Grambling. It noted that 9 students (5 white, 4 black) are currently enrolled in Tech's program and 165 students (107/58) are currently enrolled in Northeast's. The State also recommends that the two-year A.S. degree in nursing at Louisiana Tech with 180 students (153/27 also be transferred to Grambling. (Amended State Plan, at 9-10.)

The following programs and majors were to have been transferred from Louisiana Tech to Grambling:

B.A., Social Welfare

B.S., Health Education (Recreation option)

B.A., Spanish Education

B.S., Speech Education

M.S., Business Education

M.A., Art Education

M.A., Social Studies Education

M.A., English Education

In addition, Grambling and Louisiana Tech were to share services in such areas as student registration, student records, student assessment, classroom assignment, joint/collaborative academic centers, libraries, computer centers, graduate programs and sponsored research.

The Master notes with satisfaction the extent to which Grambling and Louisiana Tech and their presidents have been able to agree upon program transfers that will benefit the desegregation efforts the Court requires. Even under the consent decree, which the Court declared to be a failure for the state as a whole, several of the Grambling-Tech accords produced a positive other race presence on their campuses.[31] The new accords must be viewed in light of the prior successes and good working relationships these institutions have developed. This stipulation which is endorsed by the State and the United States lists the same program transfers as those stated in the State's Plan with a few exceptions (Grambling has deleted the

[31] Grambling reports that white students constitute 15 percent of the enrollment in its consent decree programs overall and that during the period of the consent decree the percentage of white faculty increased from 11 to 24. (Grambling Alumni Post Hearing Memorandum, at Exhibit B.)

transfer to Tech of a B.S. in Institutional Management-Food Production Management and Tech has added an M.A. in Art Education to its transfers to Grambling) that will be incorporated in this recommendation. The stipulation appears as Appendix B. The only caveat to acceptance of the stipulation relates to the need for the newly created board to determine whether any of these transferred programs is duplicative of those offered elsewhere so that it should not be offered at all. Subject to that kind of objection, the Master endorses the stipulation and recommends it to the Court.

E. *Enhancement*

The Court emphasized in its opinion that the consent decree which was premised on funds to enhance the formerly black institutions did not work. It urged that other solutions be found and suggested several which have already been discussed and analyzed. The Master, in rulings on the remedy phase, emphasized that while consent decree funding was not in issue, "testimony on enhancement of formerly black institutions remains relevant as long as that testimony connects to the issue of ending the dual racial identifiability of these institutions." (Order of February 20, 1989.) Several witnesses have testified to the value of enhancement funds. Leslie argued that enhancement funds under the consent decree had helped to desegregate Grambling and evidence discussed above supports that claim. Moreover, McTarnaghan testified that enhancement was a key element in the desegregation of Florida A&M, which received $52 million (McTarnaghan Hearing Testimony, at 56-58, 90-91).

Enhancement funds may be necessary for a variety of purposes. They may be needed to implement the program transfers. They may also be needed to implement the new programs sought by the PBIs. Southern's plan calls for several million dollars in enhancement funds to support the creation of nine new Ph.D. programs and Gram-

bling has requested $950,000 per year to continue the funding of certain successful consent decree programs. Moreover both Southern and Grambling requested significant capital outlay funds for improvements to physical facilities.

The record is not, however, clear enough for the Master to recommend that the Court order specific dollar amounts of operating or capital to be spent on enhancement. That determination requires carefully drawn budgets that have not been made a part of these proceedings.[32] Nonetheless it is clear that enhancement dol-

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[32] In their comments on the original Recommended Remedial Plan, Southern, the Grambling Alumni, and especially the United States have taken the Special Master to task for not spelling out specific amounts for enhancement spending. (Southern Response, at 15-17; Grambling Alumni Response, at 5-6; United States Response, at 18-19). Each argues, based on experience, that unless the state's obligation is set in concrete, PBIs will not receive the necessary funding. But although there may be some validity in that point, the fact remains that the record in this proceeding simply lacks the details and specifics necessary to make final determinations about enhancement dollars. Southern and the Grambling Alumni have submitted only skeletal budgets and conclusory demands for money; the United States has suggested no specific dollar amounts. Moreover, setting appropriate levels for enhancement spending is precisely the kind of detailed determination that is best left to the new board with its expertise and staff support. At least for the Master, there is no reason to believe, as some parties seem to suggest, that the new board will not undertake in good faith its obligation to set enhancement spending levels consistent with the remedial goals of this plan.

For the board's work on this issue, as well as a myriad of others, the United States has also suggested that the Court set specific deadlines. (*E.g.*, United States Response, at 14 (60 days to set missions and admissions standards, 180 days to set high school coursework requirements).) Given the complexity of the tasks to be undertaken, and the variety of variables, such deadlines are valuable as guidelines and have also to some degree been incorporated into the Proposed Order. But deadlines can become counterproductive, forcing the board to focus more on meeting or extending them than on the substance of the task at hand.

lars must be made available as soon as they can be accurately determined in order to implement the program transfers recommended herein and any other new programs the single board orders. The president of the system and his or her staff must calculate the enhancement funds needed for operating purposes and expend them properly.

It is difficult to be more precise on the enhancement issue at this stage even though that makes the enhancement remedy less than self-implementing. The best that can be done is to set some standards for enhancement funding that the board and president should utilize in their deliberations. Enhancement funds should be set aside and identified as such in the budgeting process. This may require that a certain percentage of the state higher education operating budget be designated each year to meet agreed upon enhancement goals. Increases in state operating funds that are forthcoming in the future should consider enhancement funds first. The same should hold for capital funding. In both cases specific percentages of new funds could be designated for enhancement. In the case of new capital projects, no new projects (except for maintenance ones) should be commenced until the enhancement projects have been undertaken. The president and the board should establish a budget for enhancement, both operating and capital, within the first budget year and prioritize the implementation of these funds over the succeeding years.

It has also been brought to the Special Master's attention that the current fiscal crisis facing the state may lead to cuts, rather than increases, in the overall higher education budget. (*See* May 4, 1989, letter from John N. Kennedy to the Special Master.) Under one plan that has been publicized, the state is apparently considering quite severe cuts that would involve closing the majority of state universities. (*See* "Doomsday Plan Would Close 10 La. Colleges", *The Times-Picayune*, May 17, 1989, at

B-1, col. 1.) Obviously, such action could have dramatic consequences for the implementation of this plan. It is not, however, the case that the constitutional requirement of desegregating public higher education necessarily precludes budget cuts. Since the necessity for higher education budget cuts has yet to be determined, the most that need be said now is that all cuts as well as increases must be made consistent with the desegregation goals of this plan. At a minimum, that means that funding reductions should not disproportionately affect black students or the PBIs and that existing funding for those PBI enhancement programs that have succeeded in attracting substantial other race students should be protected from budgetary ax.

F. *Other Race Recruitment and Retention*

Up to now the remedies discussed have been largely dependent upon structural changes that are intended to encourage desegregation. But other, less dramatic, remedial techniques could have equally postitive practical consequences. Ultimately desegregation comes down to how well an institution does hands-on recruitment and retention of other race students. The United States in its plan asks that the Court order the State to formulate plans to improve the recruitment of minority students, faculty, administration and staff. Its witness, Dr. Richardson, argues that the commitment of state officials, especially administrators, is a crucial factor in creating a successful environment for desegregation policy. (Richardson Witness Statement, at 9-13.) This approach is seconded by the state's witness, Eugene Trani. (Trani Witness Statement, at 17-20.) McTarnaghan states that the most important factor is the commitment of university leadership. Other witnesses (*e.g.*, O'Brien Deposition, at 22) emphasize the need to use admissions officers whose assignment is to recruit minority students. These officers are often most effective when they are of the same race as those students sought to be recruited.

Witnesses (McTarnaghan and Conrad) also testified about the need to attract other race faculty as role models in the recruitment of minority students. Conrad in particular noted the importance of black faculty at PWI institutions and recommended the "grow your own" graduate faculty approach used successfully at Wisconsin. (Conrad Witness Statement, at 23-24; *see also* Trani Witness Statement, at 17.) This is an approach that Louisiana should try, especially after it tiers its graduate programs and uses other race scholarships to attract students.

Several witnesses stressed the importance of other race scholarships (for example, Dr. Spikes, *see* Witness Statement, at 20-21; Deposition, at 36-40). The State/Task Force report even suggested a program of 8,000 scholarships at a cost of $20 million per year. Other race scholarships were utilized under the consent decree and there seems to be a consensus that they should continue. In fact Dr. Conrad proposed a subsidy program for institutions as well as individuals that would reward them for improving the desegregation picture at their institutions (Conrad Witness Statement, at 21).[33]

There is also the need to develop relationships between colleges and predominately black (or white) high schools. One of the barriers to integration is the strangeness of institutions to prospective other race candidates, which

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[33] In its comments on the Recommended Remedial Plan, the United States has criticized the use of financial incentives as proposed by Dr. Conrad. The United States argues that incentives will provide a "powerful incentive to discriminate against black students" at PBIs and will also disproportionately disadvantage PBIs for whom it will be harder to attract other race students. (United States Response, at 19). Either the United States is assuming that the board will set unreasonable goals by which to award incentives or it is anticipating that PBIs will fail to live up to reasonable goals. Incentives should only "disadvantage" PBIs if they fail to live up to *reasonable* goals—and that is precisely why financial incentives can be a sound strategy for desegregation.

creates feelings of alienation that are difficult to overcome. If institutions reach out to high school students at an early age (*e.g.*, ninth grade) they can generate new students for their own institutions and also improve the likelihood of those students attending college. Summer programs, conducted on campus and utilizing dormitories, have worked well in many other states to open up new opportunities for minority students. In Louisiana, Southeastern has a pivotal role to play in this regard. Given its location between New Orleans and Baton Rouge, and the possibility that it will remain open admission under the new tiered structure, Southeastern could end up being the "white flight" school once LSU and UNO restrict their admissions.[34] By focusing on high schools in New Orleans with a high percentage of minorities, Southeastern can contribute to an awareness of its potential for black students as well. The administration has indicated a willingness in this proceeding to do just that. (*See* Supplemental Witness Statement of G. Warren Smith, President of Southeastern; *see also* Board of Trustees' Post Trial Memorandum, at 11.) Other four-year institutions have the opportunity to play this role as well. One of the assignments of the new board should be to coordinate and fund the early identification and placement of minority students at campus-based program during the summer.

G. *Monitoring Compliance*

The views of the parties differ widely over the need for a monitoring function as part of the Court's order. The state is convinced that the single board concept alone is sufficient to ensure compliance with desegregation goals, whereas the United States placed continued emphasis upon the need for an independent monitoring function

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[34] Indeed there are some indications that this has been occurring already as Southeastern has slid back in its black enrollment during the consent decree period from 12.6 percent black in 1981 to 6.7 percent in 1988. (*See* Chart 1 *supra*.)

even under a single board arrangement. Monitoring in this setting is of course not a new idea. The consent decree established a monitoring committee that consisted of two representatives of each of the four higher education boards. This committee has been criticized as ineffective even by its last chairman, Joe D. Smith, a witness for the State (Smith Deposition, at 29-34). Dr. Davidson attributed its failure largely to the turf protection that resulted from having each board represented on the committee (Davidson Witness Statement, at 8). Of course Dr. Davidson also testified that the single board would displace the need for a monitoring committee. Others such as Dr. Conrad (*see* discussion at pp. 45-46 *supra*) have instead put more emphasis upon a newly formed monitoring committee than upon the single board concept. Southern suggests creating an independent monitoring board with members to be drawn from the existing four boards which of course simply reinstates the ineffective monitoring system that was part of the consent decree. The United States suggests the creation of an independent monitoring body whose members are drawn from nominations by the parties. This body would meet annually to review reports submitted according to the Court's direction. (*See* United States Post-Trial Findings and Legal Memorandum, at 41-43.)

The need for a monitoring function is premised largely upon the Court's continuing jurisdiction over this case. If in fact it chooses to oversee the case for a period of years, then some form of monitoring is necessary simply to aid the Court in the exercise of its jurisdiction. The remedies discussed herein place most of the responsibility for compliance upon the state and its institutions, which in the judgment of the Master is where responsibility should lie if desegregation is to become a reality for Louisiana. The single board ad its chief executive are given extensive powers to end the racial identifiability of Louisiana higher education. At the same time, of necessity much of

the impact of this remedy is to be felt in the future. Thus it is difficult to argue that the system should be released from oversight by the Court at this stage. A period of review, over five years, is the only prudent way to assure the implementation of the remedies that have been proposed.

Assuming court review, some kind of monitoring committee is inevitable. The most effective one would be small in number, experienced in makeup and independent in outlook. It must not intrude upon the day to day operatons of the board, but it should provide annual reviews and be available to answer specific requests from the board, especially in the early years. A three-person committee, with a chair, selected from names of persons with relevant experience submitted by the parties to the Court would meet this need. The committee should review agreed upon desegregation goals established by the board for each of its institutions. It should hear the views of the United States on the progress that is made each year and it should make an annual report to the Court. It should also be available, on an as-needed basis, to assist the board in resolving any questions that may arise concerning implementation of the Court's order.

H. *Interim Procedures*

The parties have noted that implementing any remedial plan ordered by the Court, especially a plan calling for the formation of a single governing board, will require some interim transition time. Thus they have debated what procedures should be adopted for implementing the Court's order during the transition period.

In the original remedial plan filed by the State, it was suggested that the single board itself be responsible for refining and implementing the proposed remedial actions, implying that implementation would necessarily be delayed until the board was in place. That position

was reinforced in the State's Amended Plan, which called for even more study and less immediate action. (*See* Amended State Plan, at 3 ("The Governor also suggests, respectfully, that a more prudent approach would be to allow a newly constituted, racially-balanced and fully representative single governing board for public higher education in Louisiana to study these issues in a less emotionally-charged and a less political environment for considerably longer period of time before reaching any conclusions.").)

The United States, suggesting that it would take 18 to 24 months to restructure the current four-board system, has taken the State to task for its perceived foot-dragging. (Amended United States Plan, at 10.) Arguing that the law demands swift action to eradicate illegal segregation, the United States said that delay should not be permitted. This position was reaffirmed in the United States' post-hearing filing. (United States Post-Trial Findings and Legal Memorandum, at 17.) For an interim procedure, the United States initially suggested that desegregation remedies should be implemented by an existing board, such as the Regents. Implementation efforts could then be passed along to the single board once it was in place. (Amended United States Plan, at 10; *see* note 2 *supra.*)

To that proposal, the State responded with its own suggested interim procedures; the State argued on its Post-Trial Memorandum that the Court should exercise its equitable power to appoint Governor Roemer as temporary receiver of the Louisiana higher education system. (State of Louisiana Post-Trial Memorandum, at 30-34). The State cited legal precedent for the appointment of such a receiver, *see Newman v. State of Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979), and argued that the Governor is well-acquainted with the state of higher education and is in the best position to take what-

ever interim steps are required. The other parties have all objected to that suggestion. (*See* April 12, 1989 Joint Motion by Southern Supervisors and Grambling Alumni to Strike the State's proposed amendment as untimely; May 9, 1989 Transcript, at 77.)

In the Recommended Remedial Plan, the Special Master suggested that no special interim procedures are necessary so long as the new board is formed expeditiously. The Recommended Remedial Plan noted that implementation of the recommendations contained therein would require numerous specific decisions by the new board. Those specific decisions and recommendations would require additional study and consideration. Were implementation handed over to an interim organization or the Governor, they would have to initiate this process, only to have control taken away as soon as the single board is in place. The board would then be confronted with a partially implemented plan and might very well disagree with the steps that had been taken. In order to carry out its own plan, the board would first have to undo those steps before implementing the remedial plan as it saw fit. In sum, adopting special procedures for interim implementation of the remedial plan could easily be counterproductive.

In their comments on the Recommended Remedial Plan, the State, the Board of Regents, the Board of Trustees and the LSU Supervisors have all supported the Special Master's approach to interim procedures. The United States and Southern University, however, have vigorously objected, arguing that failure to adopt specific interim procedures would lead to unacceptable delay. Southern at first proposed that the legislature immediately appoint a governing board (Southern Response to the Special Master's Recommended Remedial Plan, at 6), but then joined with the United States in requesting that the Special Master appoint an interim board composed of 17 members from the four current boards.

(United States Response to the Special Master's Recommended Remedial Plan, at 9-10; Recommended Appointments of the Southern University Board of Supervisors, at 2-3; May 9, 1989 Hearing Transcript, at 51.) Under Southern's proposal, each of the current boards would receive an approximately equal number of members on the new board, with four each coming from the LSU Supervisors, the Southern Supervisors, and the Trustees; five would be drawn from the Board of Regents. The United States also recommended that the current Commissioner of Higher Education serve as interim president.

At the May 9, 1989 hearing, the Special Master solicited the views of the State and the other three governing boards on this proposal. The Master also requested that the parties provide the resumes of current board members from which selections for an interim board might be made. The State, the Boards of Regents and Trustees, and the LSU Supervisors have all strongly opposed interim appointments by the Special Master. The State argues that interim appointment by the Special Master is "anathema" to the concept of the remedial plan because it wrests from the State responsibility for implementing the plan and would erode relationships between the state, the board and its president. (State Response to the Special Master's Instructions Regarding Governance, at 2.) The State also opposes limiting membership on the interim board to current board members. (*Id.* at 6 n. 4.) Following the May 9, 1989 hearing, the Board of Regents held a special meeting and voted to oppose appointment of an interim board. (*See* Attachment B to the State Response.) The Commissioner of Higher Education also asked that she not be considered for the post of interim president. (*See* letter of May 15, 1989 from Sally Clausen to the Special Master.)

In response to the Master's concerns and in order to minimize any delay resulting from transition without an interim board, the Governor has committed to appoint

a governing board within seven days of the Court order implementing the plan. (State Response to the Special Master's Instructions Regarding Governance, at 5.) The Governor also promises to press for confirmation of the nominees by the Senate within one week of the appointments and has already conducted preliminary talks with the Senate leadership regarding such confirmation. (*Id.*) While a 14-day appointment and confirmation process may be overly optimistic, 30 days to have the board in place seems entirely feasible. The board would then itself be in a position to select a chair and begin assuming authority over the remedial plan.

If such a timetable can be followed, there is little to be gained by interim appointments by the Special Master. As was stated previously, from the Master's perspective, the most important thing is that the new board be set up and put into operation as expeditiously as possible. If expeditious appointment can be accomplished by the state through normal political processes, there is no need for additional federal intervention. If, however, the board has not been appointed and confirmed within thirty days after the Court order implementing the plan, the Court, upon recommendation of the monitoring committee, should undertake to appoint an interim board.

It is to be expected that selection of a new president for the system of higher education may take several months; indeed a national search could take up to a year. While it might be preferable to wait until this key appointment is made before major decisions under this plan are made, the board needs to appoint an interim president as soon as it is constituted so as to begin making the necessary decisions called for by the Court's order. The earliest decisions will be largely logistical in nature, for example, choosing location, offices and staff. The major policy decisions under the Proposed Order must be completed within six months; although the pres-

ident may be in place for part of this time, the interim president must begin making these decisions. In that connection, there need be no prohibition on the interim president being a candidate for the permanent position, unless the board feels strongly to the contrary.

During the 30 days that the board is being assembled and taking over management authority, the current boards and their staffs can provide valuable assistance. The full cooperation of these boards during what is a very short transition period is, of course, fully to be expected since three of those boards, as parties to this proceeding, have argued in favor of the single board concept. In the case of the one dissenting board, Southern, there are sufficient assurances in the composition of the new board to gain its full support. In each case, such support from staffs, as well as board members, is vital to the success of this order.

V. CONCLUDING NOTE

This Final Report and Proposed Order represent the considered judgment of an experienced observer and participant in the higher education process. They offer the parties the opportunity to solve one of the most entrenched social problem of our time. If this plan is pursued in good faith and with dedication, then racial identifiability of Louisiana's colleges and universities should be a thing of the past. If not so pursued over the next five years, then the emphasis will shift to direct judicial control and management of the higher education system. If that becomes necessary, it may truly be said that the outcome is self-imposed.

VI. APPENDICES

APPENDIX A

Witness List

Witness	Party
1. B. K. Agnihorti Chancellor Southern University Law School	Southern
2. Walter R. Allen Associate Professor Sociology University of Michigan	Southern
3. Alexander W. Astin Director Higher Education Research Institute UCLA	Southern
4. Harlan Bareither	Regents
5. A. Troy Barksdale	LSU
6. Sharon Beard Deputy Commissioner Higher Education Board of Regents	Regents
7. Elias Blake Director Higher Education Policy Research Howard University	Southern
8. E. Grady Bogue Interim Chancellor LSU A&M	LSU
9. Wayne Brown Dean School of Business Belmont College	LSU
10. James A. Caillier President Delgado	Trustees
11. Kenneth Carpenter Dean College of Design LSU A&M	LSU

Witness	Party
12. Carolyn Collins Associate Dean Junior Division LSU A&M	LSU
13. Clifton Conrad Professor of Higher Education University of Wisconsin	United States
14. Allen A. Copping President LSU System	LSU
15. John L. Couvillion Dean, Student and Institutional Services LSU—Eunice	LSU
16. Kerry Davidson Deputy Commissioner Academic Affairs Board of Regents	State, Regents
17. William E. Davis Chancellor Oregon State Higher Education System	LSU
18. Cameron Fincher Director Institute of Higher Education University of Georgia	State
19. James W. Firnberg Chancellor LSU—Alexandria	LSU
20. William Fuller	Regents
21. Marian Gade Research Association Office of President University of Calif. Berkeley	Southern
22. Robert B. Gex Interim Chancellor SUNO	Southern
23. Davir Grindstaff Education Services Officer Barksdale Air Force Base	Trustees

	Witness	Party
24.	Wilfred Guerin Acting Chancellor LSU-Shreveport	LSU
25.	Ronald K. Hambleton School of Education University of Massachusetts at Amherst	LSU
26.	Carolyn H. Hargrave Provost LSU A&M	LSU
27.	George W. Hardy Attorney and Task Force Member	Regents
28.	William D. Hawkland Chancellor LSU Law School	LSU
29.	Ronald D. Hay Ass't Vice Chancellor Administrative Information Systems LSU A&M	LSU
30.	J. K. Haynes High School Principal	Southern
31.	James B. Henry Dean, College of Business Administration LSU A&M	LSU
32.	Sharon Hogan Director of Libraries LSU A&M	LSU
33.	Manuel L. Ibanez Chancellor for Academic Affairs & Provost, UNO	LSU
34.	Johnny Jackson, Jr. Member of New Orleans City Council	Southern
35.	T. J. Jemison Reverend and President, National Baptist Convention	Southern
36.	Joseph B. Johnson President of Grambling	Trustese, Grambling

	Witness	Party
37.	Harvey Kaiser Senior Vice President and Professor of Urban Planning, Syracuse University	United States
38.	Donald H. Kraft Chairman Department of Comupter Science, LSU A&M	LSU
39.	Lucie Lapovsky	Regents
40.	Larry Leslie Director Center for Study of Higher Education University of Arizona	United States
41.	Charles L. Martin LSU System	LSU
42.	David McCormick Vice President Academic and Research Affairs Board of Trustees	Trustees
43.	O. Carruth McGehee Dean, Academic Services LSU A&M	LSU
44.	Sean P. McGlynn Vice Chancellor for Research LSU A&M	LSU
45.	Edward McLaughlin Dean, School of Engineering LSU A&M	LSU
46.	Roy E. McTarnaghan Interim President University of North Florida; Vice Chancellor University of Florida System	State
47.	James Midgely Dean, School of Social Work LSU A&M	LSU
48.	Mary Morale Senior Budget Officer Grambling	Grambling
49.	Anthony Mumphrey Chancellor LSU—Eunice	LSU

	Witness	Party
50.	Gregory M. O'Brien Chancellor UNO	LSU
51.	Gary Orfield Professor Political Science University of Chicago	Southern
52.	Dale Parnell President & CEO American Association of Community and Junior Colleges	LSU
53.	Huel D. Perkins Executive Assistant to Chancellor LSU A&M	LSU
54.	Bill J. Priest Chancellor Emeritus Dallas County Community College	LSU
55.	Daniel D. Reneau President Louisiana Tech	Trustees
56.	Douglas Rewerts Assistant Commissioner for Facility Planning, Board of Regents	Regents
57.	Richard Richardson Associate Director Center for Post Secondary Governance and Finance Research Arizona State University	United States
58.	Perry G. Rigby Professor of Medicine LSU Medical Center	LSU
59.	Juanita Robinson Professor and Dean of Junior Division SUBR	Southern
60.	Charles "Buddy" Roemer Governor	State
61.	Donald O. Rogers Dean, Academic Affairs LSU—Eunice	LSU

	Witness	Party
62.	Marvin Roubique Assistant Commissioner for Finance, Board of Regents	Regents
63.	Frank Schmidtlein	Regents
64.	Rupert Seals Special Assistant to the Vice President Academic Affairs University of Nevada, Reno	United States
65.	William Silvia Vice President for Administration & Finance, Board of Regents	Regents
66.	Eulis Simien, Jr. Assistant Professor of Law LSU Law Center	LSU
67.	Charles W. Smith Dean, College of Education LSU A&M	LSU
68.	Donald K. Smith Professor Emeritus University of Wisconsin	LSU
69.	G. Warren Smith President Southeastern	Trustees
70.	Joe D. Smith Alexandria Daily Town Talk	State
71.	Delores Spikes President Southern University System	Southern
72.	Leroy J. Stark Director, Business Affairs LSU—Eunice	LSU
73.	Joe Terrel Chairman, Southern University Board of Supervisors	Southern
74.	Gail E. Thomas Professor of Sociology Texas A&M	Southern

	Witness	Party
75.	Eugene P. Trani Vice President for Academic Affairs, University of Wisconsin System	State
76.	Larry Tremblay Coordinator of Research and Data Analysis, Board of Regents	Regents
77.	James A. Wharton Chancellor Emeritus LSU A&M	LSU, State
78.	David A. Wise Professor of Political Economy, JFK School Harvard	LSU

APPENDIX B

Lincoln Parish Stipulation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No.: 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

STIPULATION

IT IS AGREED AND STIPULATED by all parties to this litigation that a reasonable and workable plan for achieving desegregation of the two (2) proximate institutions located in Lincoln Parish, specifically Grambling State University ("Grambling") and Louisiana Tech University ("Louisiana Tech"), is the implementation of a plan based on different roles, scopes and missions for the universities, maintenance of certain programs which have been proven to be attractive to other-race students, selective program transfers and cooperative programming.

For the present time, Grambling will continue its current admission standards. For the present time, Louisiana Tech will establish admission standards that are more selective than its current standards and will move towards becoming a selective admission university.

It is further stipulated that an additional element which will achieve further desegregation in Lincoln Parish relates to cooperative efforts between Grambling and Louisiana Tech. The parties recognize that Grambling and Louisiana Tech have had cooperative programming for over twenty (20) years. Currently, nine (9) programs are in effect. These are in the areas of:

Architecture

Master of Business Administration with options in General Administration and Computer Information Systems

Computer Engineering

Civil Engineering—Drafting Technology

Electrical Engineering—Electronics Technology

Master of Arts in the Romance Languages

Special Education

Wildlife Studies

Master of International Business and Trade

Additional cooperative programming should be undertaken in the following areas:

Engineering

Architecture

Performing Arts

It is further stipulated that, based on the joint proposal of Drs. Reneau and Johnson, the following programs should be transferred from Grambling to Louisiana Tech:

1. M.S. Elementary Education—Special Education
2. B.S. Speech, Language and Hearing Specialist
3. B.S. Special Education (Pre Non-Categorical Early Childhood Dual)
4. B.S. Special Education (Mild-Moderate Elementary Dual)

5. B.S. Special Education (Mild/Moderate Secondary
6. B.S. Art Education
7. B.S. French Education
8. B.S. Home Economics Education
9. B.S. Industrial Arts Education
10. B.S. Music Education
11. B.S. Social Science Education
12. B.S. Communications and Theatre Education
13. B.S. Geography
14. B.A. Art

The following programs should be transferred to Grambling from Louisiana Tech.

1. B.A. Social Welfare
2. B.S. Health Education (Recreation option)
3. B.A. Spanish Education
4. B.S. Speech Education
5. M.S. Business Education
6. M.A. Social Studies Education
7. M.A. English Education

The parties request that the university presidents be given latitude in the implementation of these transfers and that any modifications of these proposals be submitted to the Special Master for review. Although the State does not believe that program transfer is an effective tool to achieve desegregation, the State accepts this proposal for Grambling and Louisiana Tech only based on the recommendation of the university presidents.

Finally, it is stipulated by the parties that the following programs should be continued for the time being at Grambling:

1. B.S. Nursing
2. M.S. Criminal Justice

3. M.S. Social Work
4. D.Ed. & M.S. Developmental Education
5. M.A.L.S.
6. M.B.A.
7. M.P.A.
8. Ed.S.

These programs shall be evaluated at least on an annual basis by the Board of Regents (or, if it is adopted, the single governing board for public higher education in Louisiana urged by the State in this litigation) in order to determine if the programs are quality programs and if they are attractive to other-race students. If either or both such conditions do not exist, the Board of Regents or the single governing board, as the case may be, may terminate the program or programs, subject to whatever review process is adopted by the Court.

Based on the above, the signatories hereto agree that this plan represents a reasonable and workable plan for achieving desegregation among the two (2) proximate institutions.

This Agreement is subject to the adoption of any state wide plan of desegregation.

Respectfully submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by mailing same, postage prepaid, this —— day of March, 1989.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

v.

STATE OF LOUISIANA, *et al.*

RESPONSE OF THE SOUTHERN UNIVERSITY BOARD OF SUPERVISORS TO THE FINAL REPORT OF THE SPECIAL MASTER

[Filed June 12, 1989]

Pursuant to the orders of this court, the Southern University Board of Supervisors ("Southern") submits its comments and recommendations respecting the Special Master's Final Report.

With respect to the matters of principal concern to Southern little has changed from "Recommended Remedial Plan" of the Special Master to his "Final Report."

Southern has objected throughout these proceedings to recommendations that a single governance board is unrelated to desegregation of Louisiana's colleges and universities. Only by transforming the supposed management, educational program, and fiscal efficiencies of a single board over a multi-board system into projected efficiencies in accomplishing desegregation is the Special Master able to reach the completely novel conclusion that a single governance board will lead to increased integra-

tion of our colleges. Southern has chronicled its arguments against this and other reasoning supporting a single board as a remedy for desegregation in its pretrial and post-trial memoranda to the Special Master, as well as in its comments and recommendations to the Special Master regarding his "Recommended Remedial Plan." To avoid repeating here, Southern hereby adopts the arguments it made therein and reurges them at this time. Southern remains firm in its position that the record does not support by a preponderance of the evidence that the adoption of a single board will increase integration or satisfy the requirements of Title VI. Nor is it so shown that even if it would result in increased integration, that it is not an over broad remedy, not tightly and geometrically fitting the court-determined violations.

Further, Southern has argued, that if a single board is to be adopted, it is unnecessary and irrelevant to the single board as a desegregation remedy for the Governor to single handedly appoint all of the members at one time to this most important board. This is unprecedented power. During the constitutional convention of 1973 when the state's present for board system was adopted, much debate was had on the question of whether the then Governor Edwin D. Edwards would be permitted to appoint the entirety of the membership of the then to be established Board of Regents and the three management boards. The issue at the convention was resolved by requiring that members from the then existing higher education boards appointed by other governors be made members of the new boards. This was a fair and reasonable compromise, denying any single governor the political control over the entire higher education system at one instance. The Louisiana State Senate has recently communicated to the court its position that if there is to be a single board, it desires that the legislature make the appointments as in the State of North Carolina. The

advantage there is that no single political official would have control of this most important board, rather the power of appointment would be diffused between 144 legislators, a far less dangerous political consequence for our state. The position of the State Senate should not be lightly regarded in this matter. The Special Master has stated that the governor and three of the state's four governance board, having agreed upon the single board to achieve desegregation ". . . is persuasive evidence to the Master that most of the key participants who are needed to make desegregation work in this case are committed to this course of action." (Special Master's Final Report, p. 50) This is an incredulous statement, since the boards which the Special Master would order out of existence would have no future role to play in insuring the success of the plan of desegregation. But the legislature surely will. If the position of the referenced boards is to be credited in this court's decisions respecting the configuration of the state's governance structure, how much more must the views of the legislature influence the court's choice? The only reasonable course for this court, then, if it is to order a single board, is to provide for legislative appointments.

The alternative of judicial appointment of an initial board is attractive as an interim solution to avoid improper political considerations, but it is undesirable as a long term solution. In the long term, race-neutral issues relative to the single board must be left to the governor, the legislature and the people of the state, where they properly belong.

Finally, Southern has pointed out, that the Special Master's efforts to protect the interest of black students and of historically black institutions by providing for seven black members on the proposed 17 member board will be meaningless if the governor makes the appointments. It must be remembered that the present Governor's actions have been unfriendly and unsupportive of historically black universities. In some cases, they have

been openly hostile, as in the case of recommending the closure of SUSBO by not suggesting funding for it in the 1988-89 budget, and by cutting the Southern University System over 5.8 million in the 1988-89 budget, when all of higher education was cut by slightly over $11 million during that year. The budget recommendations for this year proposed deep cuts to Grambling and Southern as compared to historically white colleges. It is no guarantee that the interest of black students and institutions will be protected by merely requiring that blacks be appointed, unless the appointing authority is neutral and unbiased. Appointment by the legislature would insure a neutral appointing authority. Requiring the appointment of blacks currently serving on the state's existing boards initially appointed by other governor's would also provide a measure of protection.

Further, the special master unaware of a real loophole that he provides the Governor in even avoiding senate confirmation of his appointees to the board prior to the seating of the board members. Under prevailing practice, a Governor may appoint members subject to senate confirmation in between regular sessions of the legislature. The only requirement is that when the legislature comes into session, it must confirm the appointees prior to adjourning, otherwise, the appointees are out of office. As provided for on page 19 of the proposed order, the Governor could appoint board members once the legislature leaves session on July 11, 1989, the last day it can constitutionally meet in regular session, and then explain to the court that confirmation will come later, outside of the required thirty (30) day period. This would effectively deprive the senate of any say in the appointment of board members whatsoever. If appointments by the Governor are to be made; Southern would prefer that paragraph 32 of the proposed order be revised to absolutely require confirmation by the senate prior to the seating of appointees. Additionally, if the court believes that the thirty

(30) day time period for board appointment and confirmation is so short as to present the high probability that it cannot be achieved as required, the more time for impaneling of the board should be provided so that the issue can be made definite. To ask the Governor to try to appoint and the senate to try and confirm within that time and then for the Governor to bring a proposal to the court and the monitoring committee as to what would happen next adds hopeless uncertainty to the appointment scheme, and leaves little incentive for the Governor to complete the process fully or on time.

In addition to the comments and recommendations previously made by Southern in response to the Special Master's "Reccommended Remedial Plan", Southern suggests the following to the court:

1. In view of the Special Master's concerns for duplication of programs, the PWIs (predominantly white institutions) should not be permitted to institute any new adademic program until the PBIs (predominantly black institutions) have been sufficiently enhanced and have attracted a sizeable number of white students; this will be particularly true for graduate level programs and high demand, high cost programs. In fact, the Special Master's agreement to relative enhancement of the PBIs would dictate that such programs be considered for placement first at the PBIs with adequate financial support. Graduate level programs at the PBIs should not be duplicated at the PWIs whatsoever.

2. While the Special Master indicates that the record was not clear enough for him to recommend specific dollars for operation or capital to be spent, he agreed that enhancement dollars must be available to the PBIs. In fact, there is a record available for minimum specified dollars for capital outlay, namely, the dollars attached to those capital outlay

projects already approved for program enhancement and as appeared in the records submitted by Southern University. Similarly, approximate amounts for operating expenses for at least the 1989-90 year can be given on the basis of the record as follows:

(a) Appropriation for newly started enhancement programs in an amount comparable to those approved for the 1989-90 fiscal year.

(b) Dollars for enhancement of existing programs and for accreditation of programs, especially in the areas of engineering, computer science, nursing, mass communications, education, architecture, public policy, business and regional accreditation should be appropriated in amounts of $4 to $5 million each year for each of the next three (3) years.

Those funds are to be appropriated beginning with 1989-90 fiscal year to the universities and made available to them once budgets for their expenditures have been submitted and approved by the governing board with the understanding that only those funds as justified in the budget will be expended.

3. Monies should be appropriated by the state for start-up of new doctoral programs beginning in the 1989-90 fiscal year and carried over in subsequent years as needed for planning and implementation of the doctoral programs. At lease $4 million should be allotted for this purpose at the beginning until proposals can be developed for the new doctoral programs. With at least some monies available, there would be an opportunity for start up of selected doctoral programs without undue delay.

4. No community college should be made operative in the Baton Rouge area until:

(a) the minimum Capital Outlay projects referred to above have been completed; and

(b) programs in business, mass communication, nursing public policy, and other areas have been accredited and reaccredited, during the five (5) year period, have taken place, and at least three (3) new doctoral programs would have admitted students. To do so otherwise would place in jeopardy the opportunity for Southern University at Baton Rouge to attract the community college and then transfer to one of the PWIs.

5. Southern University Law Center and the Louisiana State University Law Center should be funded on the same formula basis. Parity monies should be restored through the formula to Southern University at Baton Rouge.

6. Southern University as one of the two land-grant institutions of this state should be appropriated at the non-formula noies each year for its land-grant functions. Such funding was recomended by the Board of Regents and initially is placed at approximately $2.3 million.

7. The Special Master has recommended that scholarships for other-race students be based on a fixed percentage of each institution's overall operating budget. Inasmuch as some parties in this case have indicated a greater reluctance on the part of whites to attend PBI's rather than the other way around, it would seem more reasonable to allow the PBI's a larger sum for scholarships for other-race students for the first five years.

8. Southern University at Baton Rouge should not be deprived of monies for developmental education during its transitional period to doctoral programs.

9. The court should not recognize any exceptions to admission standards for athletes except as these

athletes might qualify for exceptions in one of the other categories.

10. Southern's period of transition for selective admissions must be extended to at least five years. LSU, on the record, took four years to successfully phase-in even modest selective admission standards. The task at Southern will be more difficult. The requirement of a shorter period is a prescription for failure. General enhancement must precede selective admission and doctoral status.

11. Alphabet (e) on page 27 of the Special Master's proposed Order recommended that a pilot project should commence at Southeastern University for the summer of 1990 for the purpose of developing improved relations between high schools and the college. Southern is much more difficult for PBI's than it is for PWI's. Thus, there is an even greater need for such a program to be implemented at Southern. Special funds should be provided for this and other other-race recruitment efforts in general.

12. That section of the Special Master's proposed Order which deals with "incentives" recommends that roughly equivalent progress relative to integration goals be required of each institution. While incentives for institutions that meet or exceed their annual goals should affect institutions in a positive manner, the punitive aspect of the reverse may, in fact, result in a more rapid deterioration of institutions' efforts as they relate to recruitment.

In conclusion, the Special Master's final report leaves numerous decisions from enhancement to program transfer to the elimination of program duplication and other important decisions to a yet to be established single governance board. To this extent, the report leaves the remedy vague and uncertain. The burden that may be placed on black students, the stark victims of discrimina-

tion by the imposition of selective admissions, community colleges and the elimination of the protective voice of the Southern University Board, as well as the Board of Trustees, is contrary to the purposes of desegregation. The requirement of a single board as a centerpiece of a desegregation remedy makes the whole of the remedy unrelated to desegregation. Southern urges the court to consider the obvious common sense of its argument and to fashion an appropriate order directed to the existing boards to carry out the requirements that truly affect desegregation, such as the recruitment of other-race students and faculty, other-race scholarships, exclusive program offerings, the placement of new high demand, high cost programs in historically black universities, the overall enhancement of historically black universities, the requirement of a serious monitoring effort, the inclusion of realistic timetables by which the desegregative actions are to be accomplished, and the establishment of reasonable incentives to reward desegregative efforts.

Respectfully Submitted,

/s/ William J. Jefferson
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States mail, properly addressed and postage prepaid on this 12th day of June, 1989.

/s/ William J. Jefferson
WILLIAM J. JEFFERSON, ESQ.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

vs.

STATE OF LOUISIANA, *et al.*

OBJECTIONS TO FINAL PLAN OF SPECIAL MASTER

[Filed June 12, 1989]

Now comes GRAMBLING STATE UNIVERSITY ALUMNI ASSOCIATION, (GSUAA), through its counsel, THOMAS N. TODD, and represents as follows:

1. The Amendments proposed by the GSUAA to the preliminary plan of the Special Master, are hereby adopted herein, as objections to the final plan, as if fully set out as a part of this document.

2. The Final Plan proposed by the Special Master is unrealistic. The timetable set out to accomplish various tasks has no established priorities. Consequently, it is felt here, that the PBIs. already denied adequate resources, will be relegated to the "bottom of the pile", thereby increasing the harm they have already suffered. As an example of this I offer the following:

A. Within *90 days* after entry of this Proposed Order, the Board must accomplish the following:

1. Develop and implement procedures for use by Advisory Committee. (P. 4 Proposed Order)

2. The appointment of a Vice-President for the Community College System. (P. 10 Proposed Order)

B. Within *120 days* after entry of this Proposed Order, the Board must accomplish the following:

1. The Board shall set admissions standards for Comprehensive Universities. (P. 7 Proposed Order)

2. The Board shall develop appropriate admissions programs for high school coursework that will be required for admission to each institution. (P. 9 Proposed Order)

3. The Board shall insure that LSU Law School and Southern University Law School develop cooperative agreements regarding course taken by students at each institution.

C. Within *180 days* after entry of this Proposed Order, the Board must accomplish the following:

1. The Board with staff shall develop budgets for PBI's capital outlay. (P. 15 Proposed Order)

2. The Board shall reorganize Community College System. (P. 10 Proposed Order)

3. The Board shall review two-year programs at four-year institutions to see if conflicts exist with Community College System. (P. 12 Proposed Order)

D. Within *365 days* after entry of this Proposed Order, the Board must accomplish the following:

—Begin planning for Community College in Baton Rouge. (P. 12 Proposed Order)

3. Considering the past history of how the PBIs have been handled in this state, unless this court establishes priorities, the PBIs may well suffer while this Board work on other matters.

Therefore, it is recommended herein that the Budget process for programmatic and capital outlay projects for PBIs be begun immediately upon the formation of the Board, not within 180 days of its formation. To wait this long is to run the risk of placing universities already behind, even further.

Further, it is recommended that GSU's doctoral program in Developmental Education be retained pursuant to Court Order, considering its record of success and especially with the State's future emphasis on remedial education.

Finally, since GSU and Louisiana Tech have agreed to program transfers and the parties have adopted that approach, it is recommended that those be transferred immediately, by Court Order, on a priority basis with proper funding.

WHEREFORE, for the foregoing reasons the final plan should be amended consistent with the recommendations set out above.

Respectfully submitted,

/s/ Thomas N. Todd
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing OBJECTIONS TO FINAL PLAN OF SPECIAL MASTER has been served on the following counsel of record, properly addressed, by depositing same in the United States mail, postage prepaid on this 9th day of June, 1989.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

Section "A"

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA, *et al.*,
Defendants

MOTION FOR A NEW TRIAL AND/OR MOTION TO ALTER OR AMEND JUDGMENT

Defendant, Southern University Board of Supervisors, moves the court to set aside the Findings of Fact and Conclusions of Law and to vacate the judgment entered herein on the 19th day of July, 1989, and to grant defendant a new trial and/or to alter or amend the judgment on the grounds that:

1. The judgment is contrary to the law in that the court decided a major portion of the issues in the case on constitutional grounds, when only Title VI claims were properly before it.

2. The judgment is contrary to the law in that the court supplanted its interpretation of the standard for desegregation of the state's higher educational system for the HEW Criteria which sets forth HEW's interpretation of Title VI desegregation standards.

3. The judgment is contrary to the law in that its provisions for selective admissions, the creation of a community college system, the merger of the Southern Uni-

versity Law Center into the LSU Law Center, and the requirement of reverse incentives or taxes for institutions failing to meet desegregation goals place a disproportionate burden on present and prospective black students, black faculty and black staff, as well as on predominantly black institutions.

4. The court erred in requiring the merger of the Southern University Law Center with the LSU Law Center in that merger of the law centers are not supported in whole nor in part by the record in this case.

5. The judgment is contrary to the law in that it is not tailored to geometrically fit the violation found, but invades other areas of race neutral decision-making that should properly be reserved to the State of Louisiana.

6. The judgment is contrary to the law in that the court's order fails to conform with the rules setting forth the form of judgment for district court orders.

7. The judgment is contrary to the law insofar as it holds that a race conscious remedy to provide for protection of the interest of black students and predominantly black institutions, under the circumstances of this case, is not legally permissible.

8. The court erred in ruling clearly erroneous the Special Master's finding that a presence of black members on the recommended single governance board for higher education should be disproportionately higher than the white presence on the board in order to insure protection of the interest of black students and historically black institutions during a limited transition period.

9. The court erred in ruling that the record before the court provided an insufficient basis upon which to make a specific award as to enhancement, in not requesting additional information from the parties in order to make a specific award, or in the alternative in not articulating guiding principles to be followed by a single board in determining the required enhancements of historically black institutions.

10. The judgment is contrary to the law insofar as it fails to address the requirements for faculty and staff integration.

11. The court erred in ruling that Paul W. Murril should serve as a member of this court's monitoring committee, after setting as a standard for appointment that the monitoring committee members have no connection with any university in the state.

Wherefore, defendants pray that after due proceedings had, the court grant defendants the relief requested.

Respectfully Submitted,

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I hereby certify that a copy of the above and foregoing pleading has been served on the following counsel of record properly addressed by depositing same in the United States mail with sufficient postage prepaid on this 1st day of August, 1989.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

Section "A"

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA, *et al.*,
Defendants

MEMORANDUM IN SUPPORT OF MOTION OF THE SOUTHERN UNIVERSITY BOARD OF SUPERVISORS FOR A NEW TRIAL AND/OR MOTION TO ALTER OR AMEND JUDGMENT

Defendant, Southern University Board of Supervisors (Southern) urges this court to grant a new trial on the issue of remedy and/or the issuance of an order in this matter in conformance with applicable law. In connection with its motion, Southern argues as follows:

I.

INSOFAR AS THE JUDGMENT OF THE COURT RESTS STRICTLY ON CONSTITUTIONAL GROUNDS, IT IS CONTRARY TO THE LAW SINCE ONLY TITLE VI CLAIMS ARE PROPERLY BEFORE THE COURT.

In the court's Order and Reasons of August 2, 1988, it held that the plaintiff, the United States of America, has proper standing to bring the instant action under Title VI of the 1964 Civil Rights Act. This limiting ruling was made necessary by the opposition of certain defendants to the standing of the United States to raise claims directly under the Fourteenth Amendment to the

United States Constitution, and by an overwhelming weight of authority well establishing the position that no such claim under the Constitution could be maintained by the United States in this action. *United States v. Philadelphia*, 644 F.2d 187 (3rd Cir. 1980); *United States v. Mattson*, 600 F.2d 1295 (9th Cir. 1979); *United States v. Solomon*, 563 F.2d 1121 (4th Cir. 1977). Frankly, at this juncture in the development of the law, it is doubtful that the United States would itself contend that it has standing to raise Fourteenth Amendment claims and would admit that in the absence of a private party plaintiff joining with it, Fourteenth Amendment claims could not be before the court in this action. *See, United States v. Alabama*, 828 F.2d 1532, 1547 (11th Cir. 1987). While Title VI derives from the Fourteenth Amendment, the two are not the same. In a Title VI action, the United States is enforcing the Constitution only in accordance with the express formulated prophylactic means of protecting the Equal Protection Clause as authorized by Congress. Section 5 of the Fourteenth Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966).

The Court, in the *City of Richmond v. J. A. Crossen Co.*, (cite) states:

> "Congress, unlike any state or political subdivision, has a specific mandate to enforce the dictates of the Fourteenth Amendment. The power to enforce may at times also include the power to define situations which Congress determines threaten principles of equality and adopt prophylactic rules to deal with these situations."

Chief Justice Burger, writing the plurality opinion in *Fullilove v. Klutznick*, 448 U.S. 448, 483-484 (1980), discusses in detail Congress' unique remedial powers in

comparison with the court's remedial powers to enforce the Equal Protection Clause:

> "Here, we deal not with the limited remedial powers of a federal court, for example, but with the broad remedial powers of Congress. It is fundamental that in no organ of government, state or federal, does there repose a more comprehensive, remedial power than in the Congress, expressly charged by the Constitution, with competence and authority to enforce Equal Protection guarantees. Congress not only may induce voluntary action to insure compliance with existing federal statutory or constitutional anti-discriminatory provisions, but also, where Congress has authority to declare certain conduct unlawful, it may, as here, authorize and induce state action to avoid such conduct."

Under the above-described power of Congress to authorize and induce state action to avoid Equal Protection violations, Congress enacted Title VI of the 1964 Civil Rights Act and authorized each agency, including the then Department of Health, Education and Welfare (HEW), to promulgate standards by which desegregation could be achieved in a definite time. Title VI, 42 U.S.C. Sec. 2000(d) states:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, under any program or activity receiving federal financial assistance."

Thus, the remedy to be fashioned in this case must be fashioned in accordance with the dictates of Congress as articulated through Title VI. The court's conclusion on p. 7 of the Opinion and Order that "the system of multiple boards is therefore a defect in the state's system of higher education that violates the federal constitution" is *ultra vires* and unauthorized.

The court's conclusion of unconstitutionality is curious not only for the reason that the plaintiff in this case could not have raised such claim, but also because it is stated for the first time in the court's decision on remedy. It more properly should have been a part of the court's discussion and decision on liability which would have permitted some opportunity for briefing and argument on the matter. But more weighty considerations are involved than mere surprise and lack of notice of the court's thinking along these lines. A fundamental and well settled principle, the doctrine of judicial restraint, requires that federal courts avoid deciding constitutional questions where their resolution is unnecessary to the decision of the case. The United States Supreme Court in *Ashwander v. T. V. A.*, 297 U.S. 288, 347, 56 S.Ct., 466, 483 (1936), long ago expressed the Court's position on this issue:

> "The court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of . . . . Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the court will decide only the latter."

Thus, an avoidance of the constitutional issue has been articulated numerous times since the *Ashwander* decision, and, therefore, leaves little room for tolerating the unnecessary exercise of constitutional adjudication. It is clear that the court should only decide constitutional issues in cases where such a decision is unavoidable.

For example, in *Spector Motor Company v. McLaughlin*, 732 U.S. 101, 65 S.Ct. 152 (1944), the Supreme Court stated:

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it

> is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." 323 U.S. at 105.

The philosophy that underlies this doctrine of judicial restraint was expressed by the Court in *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549, 65 S.Ct. 1409 (1947):

> "The policies ultimate foundations, some if not all of which also sustain the jurisdictional limitation, lay in all that goes to make up the unique place and character in our scheme of judicial review of governmental action for constitutionality." 331 U.S. at ———.

The thrust of this doctrine arguably places an affirmative duty on the court to seek a non-constitutional resolution of the controversy before it. When such a resolution is not possible, only then should the court reach the constitutional issue raised, provided one, unlike here, is properly raised.

In *Jean v. Nelson*, 472 U.S. 846, 105 S.Ct. 2992 (1985), the Court explained that the court below should have addressed the issue regarding the immigration statutes and INS regulations first, rather than after its discussion of petitioner's constitutional right to obtain nondiscriminatory parole consideration. The non-constitutional resolution of the issue was clearly preferable to the constitutional one, in the Court's opinion. *See also, Three Affiliated Tribes of Bertole Reservation v. World Engineering*, 467 U.S. 138, 104 S.Ct. 2267 (1984); *Gulf Oil Company v. Bernard*, 452 U.S. 89, 101 S.Ct. 2193 (1981). In *Lyng v. Northwest Indian Cemetery Protective Association*, —— U.S. ——, 108 S.Ct. 1319 (1988), the Supreme Court refused to reach the First Amendment issue involved in the Forest Service's decision to allow timber harvesting and road construction in an area of a national forest traditionally used for religious purposes by members of American Indian tribes. Explaining the principle of restraint, the Court stated:

> "The principle required the courts below to determine before addressing the constitutional issue whether a decision on that question could have entitled respondents to relief beyond that to which they were entitled on their statutory claims. If no additional relief would have been warranted, a constitutional decision would have been unnecessary and therefore inappropriate. 108 S. Ct. 1323-24.

The court in *Lyng* indicated that after a resolution on non-constitutional grounds, a court might also reach the constitutional issues if further relief is warranted after making an express determination that a full resolution cannot be reached on non-constitutional grounds. Thus viewing the court's ruling on the unconstitutionality of the Louisiana's system of higher education governance and other issues which it has based on constitutional grounds in the light of the most favorable decisions, it seems clear that the uninvited action of this court in striking down a provision of the Louisiana State Constitution has made somewhat short shrift of these principles to which the Supreme Court has gone to great lengths to establish as circumscribing the power of federal courts. To the extent then that this court has reached legal conclusions on the bases of constitutional violations, it has erred not only in deciding an issue not properly before it, but also in disregarding the well established Supreme Court standard of judicial restraint.[1] With respect to remedy, then, the relevant question before the court was "what has Congress demanded of the State of Louisiana through its enactment of Title VI pursuant to Section 5 of the Fourteenth Amendment," not "what might the Fourteenth Amendment have demanded, apart from Title VI requirements." With respect to liability, the

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[1] Lower federal courts have followed this doctrine of avoiding unnecessary constitutional adjudication and instead disposing of controversies on statutory or non-constitutional ground whenever possible. *See U.S. v. Henry*, 709 F.2d 298 (5th Cir. 1983); *Universal Amusement Co. Inc. v. Vance*, 587 F.2d 159 (5th Cir. 1978).

court correctly uses a Fourteenth Amendment analysis to determine the liability question. Title VI provided an adequate basis for this court's decision on liability and, in any event, it was the only ground for decision available to it.

II.

THE COURT IS WITHOUT AUTHORITY OR JUDICIAL POWER TO SUBSTITUTE ITS INTERPRETATION OF THE STANDARD FOR DESEGREGATION OF THE STATE'S HIGHER EDUCATIONAL SYSTEM FOR THE HEW CRITERIA WHICH SETS FORTH HEW'S INTERPRETATION OF TITLE VI DESEGREGATION STANDARDS.

Pursuant to 42 U.S.C. Subsection 2000(d)-1, HEW promulgated guidelines for the desegregation of public elementary and secondary education but delayed doing so for higher education.

Adams v. Richardson, 356 F.Sup. 92 (D.D.C. 1973), affirmed *per curiam*, 480 F.2d 1159, 1164-1167 (D.C. Cir. 1973) ordered HEW to comply with the mandate of 42 U.S.C. Subsection 2000(d)-1 by promulgating guidelines for the desegregation of statewide systems of higher learning. The Court of Appeals found that HEW had delayed in the formulation of guidelines principally because higher education desegregation presented unique and complicated problems for which HEW had not acquired expertise, though it already had considerable experience in the desegregation of elementary and secondary schools. The court then gave HEW sufficient time to conduct a thorough study with the following caveat:

> "A predicate for minority access to quality post graduate programs is a viable, coordinated statewide higher education policy that takes into account the special problems of minority students and of black

> colleges. As amicus points out, these black institutions currently fulfill a crucial need and will continue to play an important role in black higher education."

The court ruled that only after these rules and guidelines were promulgated could HEW seek to enforce 42 U.S.C. Section 2000(d) against any other states named as parties in the suit. Not insignificantly, Louisiana was a party in that suit and was served with the court's mandate and order.

Pursuant to the *Adams* mandate to HEW to comply with its statutory duty under 42 U.S.C. Subsection 2000 (d), HEW promulgated guidelines for the desegregation of higher education. *See, Adams v. Califano,* 430 F. Supp., Order, at 121. *See* Amended Criteria Specifying Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 42 Fed. Reg. 40780 (August 11, 1977). Subsequently, HEW revoked those guidelines and promulgated new ones. *See also,* Revised Criteria, 43 Fed. Reg. 6658 (February 15, 1978). *Adams v. Bell,* 711 F.2d 161, 165 n. 28, 29 (D.C.C. 1983).

Southern has argued that the HEW Criteria so required and so promulgated should be accorded the full force and effect of law and can be disregarded by this court only on the grounds of arbitrariness and capriciousness. No such finding has been made. This court has deemed Southern's arguments in this respect not well taken apparently for two reasons. First, the court reasons that the very court that ordered HEW to develop the criteria did not treat them as binding rules, citing *Adams v. Bell,* 722 F.2d 161 (D.C. Cir. 1983), *cert. denied,* 465 U.S. 1021 (1984) where the Court stated:

> "Thus, the point of his various court *orders* as Judge Pratt explained, was not to specify what the final results of enforcement would be in every detail, nor to decree unalterable requirements for compliance with Title VI, but rather to have the department initiate the process of enforcement, the process by

> which the specifics of compliance would then be determined." 722 F.2d at 165-66. (Emphasis Added)

But this ground seems incorrect. A careful reading of the majority opinion will make clear that the court there was not referring to the Criteria as not imposing unalterable requirements, but rather to Judge Pratt's orders. These orders never presumed to decree any requirements for higher education desegregation whatsoever. They simply directed the department to adopt compliance guidelines. Nowhere does the majority opinion refer to the Criteria as not decreeing unalterable requirements, as the State has argued, and with which this court mistakenly agreed.

Secondly, in determining that the HEW Criteria should not be accorded the full force and effect of law, the court relies on the state's argument that HEW itself admitted that the criteria are not promulgated in accordance with rule-making provisions of the Administrative Procedure Act (APA) and are not substantive regulations. The state cited, and the court relied upon, a "Memorandum in Opposition to Respondent's Motion for Dismissal of the Administrative Proceedings" filed in a proceeding entitled *In the Matter of the State of North Carolina*, HEW Docket No. 79-VI-1 (filed by HEW on September 4, 1979, and attached to the State of Louisiana's Post Trial Memorandum), wherein HEW's counsel is quoted as follows:

> "Respondents argue that the Criteria were not promulgated in accordance with the APA requirements. We agree. Respondents argue that the Criteria were not published in the Federal Register as a proposed rule. We agree. Respondents argue that the Criteria are, therefore, not regulations. We agree. Nor were they intended to be."

We have argued to the court that treatment of this "testimony" of HEW's counsel as dispositive of the posi-

tion of the agency and as to the ultimate effect of the HEW Criteria is not permissible. We have argued that the distant arguments of HEW's counsel are not properly before the court and are not properly a part of the record upon which the court may make its decision. But, in any event, it is clear that these arguments and this "evidence" are nothing more than an attempt at the much maligned post-hoc rationalization of agency action. HEW's lawyer in the subject case was faced with pointed opposition seeking to establish that the Criteria, or guidelines, were due no effect since they were not promulgated as rules. He argued that the Criteria, intended as guidelines for compliance with Title VI, need not have been promulgated as rules. *See, Global Van Lines, Inc. v. I.C.C.*, 714 1290, 1299 (5th Cir. 1983). *See, Motor Vehicle Manufacturer's Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29, 103 S.Ct. 2856, 2870 (1983).

The court will recall that the state argued, and HEW's counsel seemed to have agreed, in the cited memorandum that the Criteria were not promulgated in accordance with the notice and comment provisions of the Administrative Procedure Act and, therefore, the Criteria could not be considered rules. This argument is apparently premised on the provisions of Title 5, U.S.C. Section 553 (b), which states that an agency must give notice and afford an opportunity to comment on any proposed rulemaking that it undertakes.[2]

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[2] There is, however, a benefits exception or exemption under 553(a)(2) for matters relating to public property, loans, grants, benefits and contracts. As a general rule, rule making covering any of these areas is exempt from the standard notice and opportunity for comment requirement of 553 unless the agency specifically selects to waive this exemption. In a statement of public policy published in the Federal Register dated January 28, 1971, the Department decided to waive the exemption, and to require all agencies issuing rules and regulations relating to public property, loans, grants, benefits, or contracts to utilize the public participa-

The question which we are now faced with is whether HEW's failure to publish notice that it was engaging in rule making with regard to the Revised Criteria, rendered these criteria invalid or non-binding regulations of the department. In the case of *Arlington Oil Mills, Inc. v. Knebel*, 43 F.2d 1092 (5th Cir. 1976), the Fifth Circuit Court of Appeals stated:

> "The lack of formal publication does not preclude the effectiveness of an otherwise validated agency action. Citing *U.S. v. Aarons*, 310 F.2d 341, 348 (2nd Cir. 1962)

In the *Aarons* case, the 2nd Circuit held that the failure of APA required Federal Register publication is without consequence to a person having actual knowledge of the agency's actions. Likewise, the Court in *Arlington Oil Mills* found that neither the Department of Agriculture's failure to publish an announcement in the Federal Register, nor its failure to publish a basis and purpose statement, rendered the announcement ineffective as to the parties in the litigation. The *Arlington Oil Mills* court found that the peanut industry had actual notice of a meeting held by the Department of Agriculture to discuss the adoption of a 1976 peanut price support differentials. The court noted that no contention was made that any person was not given a full, fair opportunity to participate in the rule making process. 5 U.S.C. Sec. 553(c). Indeed, as the court further stated, everyone who was a party to the litigation knew about the content of the announcement which had been made. All were deemed to have actual notice of the department's actions, and accordingly, the failure to publish was not fatal to the agency's actions.

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tion procedures of 5 USC 553 (Notice and Opportunity for Comment). Save this waiver, it is significant to note that the Congress would have permitted the enactment of guidelines such as are here without the notice requirements.

Likewise, here, Louisiana had actual knowledge that HEW was preparing the criteria pursuant to an order of the *Adams'* court, a fact of which this court may take judicial notice. In fact, as previously stated, Louisiana was one of the initial ten states determined by the Office of Civil Rights to be continuing to operate dual higher education systems under Title VI; as one of the ten states, Louisiana was named and included in the original actions filed; Louisiana, being aware that HEW required it to file an acceptable desegregation plan failed to do so and was sued by the United States Department of Justice in 1974; and even though Louisiana failed to submit a plan as was required, it was aware that the *Adams* court entered an order directing HEW to establish criteria specifying the ingredients of acceptable desegregation plans for higher education institutions. If the court is not satisfied that these matters may be judicially noticed, the taking of further evidence on this matter would be in the interest of justice.

A. WHETHER OR NOT THE COURT DETERMINES THAT THE CRITERIA ARE LEGISLATIVE RULES, THEY ARE NONETHELESS BINDING ON THE COURT IN THE FASHIONING OF A REMEDY

Because the court found for the two reasons above stated that the HEW Criteria did not constitute a rule under the APA, it concluded that as a result, it would only review and consider the Criteria, but not follow them, in developing the plan. We believe that more than passing notice of the Criteria is demanded and that they are binding on the court in this case whether they are considered legislative rules or not. In this connection, it is significant to note the characterization accorded the Criteria by the HEW counsel in its memorandum heretofore referenced. There counsel states:

> "The Criteria used successfully by several states, were intended to be *interpretive rules*. They represent the Department's interpretation of the requirements of Title VI of the Civil Rights Act of 1964 and 45 C.F.R. Part 80 as they relate to the desegregation of state systems of higher education." See Memorandum in Opposition to Respondent's Motion for Dismissal of the Administrative Proceedings, *In the Matter of The State of North Carolina*, HEW Docket No. 79-VI-1 (Filed by HEW on September 4, 1979), at page 21. (Emphasis added.)

While we do not believe that counsel's arguments dispose of the effect to be accorded the Criteria, nonetheless, if the court is to use the memorandum argument of counsel as evidence to establish that the Criteria are not legislative rules, then it must accord equal treatment and agree with HEW's counsel that they are at least interpretive rules.

But more substantially, the Attorney General's Manual defines interpretive rules as "rules *or statements* issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *See* Attorney General's Manual on the Administrative Procedure Act, 30 n. 3. (1947).

Professor Schwartz defines interpretive rules as "statements as to what the agency thinks a statute or regulation means; they are statements issued to advise the public of the agency's construction of the law it administers." B. Schwartz, Administrative Law, Section 4.6 at 159 (2nd Edition 1984).

Professor Davis' definition of an interpretive rule is "any rule an agency issues without exercising delegated legislative power to make law through rules." K. Davis, 2 Administrative Law Treatise, Section 7:8, p. 36.

Professor Davis sees agency construction of statutes as interpretive rules. "When an administrator either gives

meaning to a statute or answers a question that cannot be answered by finding the meaning in the statute, and when he stated in general terms what he is doing, the statement is called an 'interpretive rule' whether or not anything is in fact interpreted." [3]

Indeed, the Criteria were published in direct response to Judge Pratt's order to HEW to fashion guidelines for the interpretation of compliance standards under 42 U.S.C. Subsection 2000(d)-1. *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C. 1973)—substantively affirmed by *Adams v. Richardson*, 156 U.S. App. D.C. 267, 480 F.2d 1159 (D.C. Cir. 1973). The D.C. Circuit held that whether a state had complied or not was a decision for HEW pursuant to certain regulations or standards;

> "It is, rather to assure that the agency properly construes its statutory obligations and that the policies it adopts and implements are consistent with those duties and not a negation of them . . . Id, 56 U.S. App. D.C. at 271-72, 480 F.2d at 1163-64.

The standards promulgated by HEW in response to the *Adams* order clearly are interpretative rules. It must be conceded that the Criteria represent at the very least interpretative rules even if this court rejects the argument above that they are legislative rules.

The question then becomes: what weight is the court to give the Criteria in the court's fashioning of a desegregation remedy. We argue that the Criteria are controlling on the court.

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[3] For a general discussion of the definition of interpretive agency rules, see *Kevin W. Saunders*: "'Agency Interpretations and Judicial Review: A Search for Limitations on the Controlling Effect Given Agencies Statutory Constructions." 30 Arizona Law Rev. 769, 770, f.n. 4 (1988).

B. THE CRITERIA ARE CONTROLLING ON THIS COURT IN THE FASHIONING OF A DESEGREGATION REMEDY UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 UNLESS THE COURT FINDS IT TO BE ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW

In *Batterton v. Francis*, 42 U.S. 416 (1977) the Court adopted the definition given by the Secretary of Labor for what constitutes "unemployment". It did so because Congress had expressly delegated to the Secretary the power to determine what constitutes "unemployment".

The Court said:

> "In a situation of this kind, Congress entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term. In exercising that responsibility, the Secretary adopts regulations with legislative effect. A reviewing court is not free to set aside those regulations simply because it would have interpreted the statute in a different manner.
>
> The regulation at issue in this case is therefore entitled to more than mere deference or weight. It can bet set aside only if the Secretary exceeded his statutory authority or if the regulation is 'arbitrary, capricious, an abusive discretion, or otherwise not in accordance with law.' " *Batterton*, 432 U.S. at 425-26. 26.

The *Batterton* case is interpreted by *Saunders*, *op. cit.* at p. 774 to mean that "the Court established that there was a subclass of interpretative rules, for which authority to construe the statute in question had been expressly delegated to the administrative agency. The courts were to play a minimum role, affording the agency view controlling weight". *See also*, *U.S. v. Morton*, 467 U.S. 822, 834 (1984), wherein it is said: "Because Congress ex-

plicitly gave authority to construe the statute by regulation, in this case we must give the regulations legislative and hence controlling weight, unless they are arbitrary, capricious or plainly contrary to the statute". Professor Monaghan, in *Monaghan, Marbury And The Administrative State*, 83 Colum. Law. Rev. 1, 27-28 (1983) points up that where Congress has explicitly delegated authority for an agency to flesh out and fill in the details of a statutory enforcement scheme that the failure by the courts to grant the agency interpretation the same effect as that due a statute would be violative of the principle of legislative supremacy.

In *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555 (1980), the Court held that "informational letters prepared by the staff for the Federal Reserve Board involving major policy without notice to those who are affected or opportunity for comment is binding on a court, unless it is "demonstrably irrational". In that case the question was whether an acceleration clause in a credit sale agreement is required to be disclosed in the Truth in Lending disclosure statement. Resolution of the question required an interpretation of the Truth in Lending Act and Regulation Z promulgated thereunder.

The issue in *Milhollin* was presented in a lawsuit between the creditor and a consumer involving a particular credit sale transaction. The informational letter with respect to this issue was prepared by the staff in response to inquiries from the public and published as Informational Letters wherein the staff gives its opinion on how the Truth in Lending Act and Regulation Z are to be interpreted with respect to specific hypothetical fact situations.

The Court clearly followed the *Batterton* line of reasoning in arriving at its conclusion.

In *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837 (1984) the Supreme Court

reiterated in clear language the above stated principle of law following the *Batterton* case. Justice Stevens in *Chevron*, at p. 842-843, stated that "If Congress has explicitly left a gap for the agency to fill, there is an expressed delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious or manifestly contrary to the statute".

The courts have consistently interpreted 42 U.S.C. Subsection 2000(d)-1 to evidence an explicit delegation of authority by Congress to the Secretary of HEW to determine the standards of compliance with Title VI of the Civil Rights Act of 1964. See, *Adams v. Califano*, 430 F. Supp. 118 (D.D.C. 1977); *State v. Dept. of Health, Ed. and Welfare*, 480 F. Supp. 929 (E.D. N.C. 1979), at p. 937, f.n. 4.

Therefore, inasmuch as Congress has explicitly left a gap for the Secretary of HEW to fill in with respect to the meaning of compliance in the desegregation of higher education, it is incumbent upon the courts in formulating plans for compliance to defer to the guidelines promulgated by the Secretary of HEW i.e., the HEW Criteria. Neither this court nor the Master has ever held that the Criteria are either arbitrary, capricious or manifestly contrary to Title VI. Therefore they are controlling on this court with respect to the fashioning of the desegregation remedy.

C. THE HEW CRITERIA HAVE CONTROLLING EFFECT ON THE DECISION OF THIS COURT EVEN IF IT IS HELD THAT CONGRESS HAD NOT EXPLICITLY DELEGATED THE AUTHORITY TO ELUCIDATE THE PROVISION OF TITLE VI TO THE SECRETARY OF HEW

Justice Stevens in *Chevron* at p. 843 said, "Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case,

a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency."

Justice Stevens also noted that whenever the court is confronted with an issue that involves the application of a statutory provision which is not patently clear on the face of the statute and an administrative agency charged with the statute's enforcement has rendered an opinion as to the meaning of the provision in question, the only question for the court is to determine whether or not the agency's interpretation is a permissible construction of the statute. He said, in *Chevron* at p. 842,

> "when a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."

At f.n. 11 of Justice Stevens' opinion, at p. 842, he further pointed out that "the court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding."

In *Young v. Community Nutrition Institute*, 476 U.S. 974 (1986), the Court carried on the *Chevron* rationale

for the supremacy of the legislature over the judiciary in the construction of statutory enforcement schemes by holding that where the language of a particular statutory provision is inherently ambiguous the agency's interpretation is controlling on the court if it is sufficiently rational so as not to be in clear violation of the statute. Further, in *National Labor Relations Board v. United Food and Commercial Union, Local 23*, 108 S.Ct. 413, 426 (1987), Justice Scalia in a concurring opinion emphasized the fact that the *Chevron* standard for judicial review of agency interpretation of the statute is still controlling on the lower courts with continuing vitality.

The series of cases cited above have prompted scholars to conclude that in the area of agency construction of statutes the agency interpretation has controlling effect on courts in their interpretation of those statutes. In *Saunders, op. cit.* p. 800, Professor Saunders concludes after review of the recent trends in the Supreme Court cases that:

> "The judiciary's role in the interpretation of statutes administered by administrative agencies has undergone a period of decline. In most if not all cases, the agency view as to the meaning of the statute is now due controlling effect, and a court may not substitute its view of the meaning of the statute unless it finds the agency to be arbitrary and capricious or wholly unreasonable".

This view of the supremacy of the HEW Criteria was anticipated by the Fifth Circuit in the following two decisions, *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966) Aff'd en banc 380 F.2d 385 (5th Cir. 1967); *Price v. Denison Independent School District*, 348 F.2d 1010, 1015 (5th Cir. 1965). In these cases the Fifth Circuit held that the HEW Revised Criteria for the fashioning of desegregation remedies in the public school system would serve as a binding standard on all district courts within the Fifth

Circuit. The court stated that the district courts must cooperate with the enforcement of the federal agencies in order to promote uniformity and enforcement. This sensible approach presaged, at least in the area of desegregation, the current thinking of the Supreme Court on judicial review of agency interpretation.

We therefore respectfully urge the court to accept the proposition that in fashioning a desegregation remedy, it must give full and controlling effect to the HEW Criteria. To the extent that it has not done so in its Order, that Order should be modified to properly reflect and incorporate the Criteria.

III.

THE COURT'S ORDER CALLING FOR THE INSTITUTION OF SELECTIVE ADMISSIONS, THE CREATION OF A COMMUNITY COLLEGE, THE MERGER OF THE SOUTHERN UNIVERSITY LAW CENTER INTO THE LSU LAW CENTER, AND THE REQUIREMENT OF REVERSED INCENTIVES OR TAXES FOR INSTITUTIONS FAILING TO MEET DESEGREGATION GOALS, PLACES A DISPROPORTIONATE BURDEN ON PRESENT AND PROSPECTIVE BLACK STUDENTS, BLACK FACULTY AND BLACK STAFF, AS WELL AS ON PREDOMINANTLY BLACK INSTITUTIONS.

The D. C. Court of Appeals, in *Adams*, recognized the need for "more and better trained minority group doctors, lawyers, engineers and other professionals. It counseled HEW in fashioning a remedial scheme for higher education to take into account the "special problems of black colleges." And later in 1977, the district court in its supplemental order, at p. 4, required that:

> "The process of desegregation must not place a greater burden on black institutions or black stu-

> dents' opportunity to receive a quality public higher education. The desegregation process should take into account the unequal status of black colleges and the real danger that desegregation will diminish higher educational opportunities for blacks."

The HEW Criteria adopt these judicially suggested standards and in Section F of the Criteria, it speaks in plain language summarizing the court's already well-stated view:

> "However, as the court has instructed, the transition to a unitary system must not be accomplished by placing a disproportionate burden upon black students, faculty or institutions, or by reducing the educational opportunities currently available to blacks." 43 Fed. Reg. 660.

Southern fails to see how this court's requirements in its order of selective admissions, a community college system, the merger of the Southern University Law Center into the LSU Law Center and the requirement of reverse incentives for institutions will not plainly conflict with these considerations. The referenced judicial pronouncements, as well as HEW's restatement of them, are contained in the preamble to the Criteria, and are given meaning and practical significance under the provisions of the Criteria that dictate the elements of a plan.

It would seem plain that students who are attending or who plan to attend the Louisiana State University Law Center will be unaffected by the requirement for merger. On the other hand, those students who are attending or who plan to attend the Southern University Law Center, the majority of whom are black students, will have to make drastic choices and changes and endure the entirety of the burden of transition to the merged institution. Save for those few black students who attend Southern and who meet the entrance requirements for the LSU Law School, the remainder of the students who

attend or who might attend the Southern Law Center, will have to gain admission through the exceptions provided by the court for special admissions. We have argued before that these special or exceptional admissions label black students and single them out as "inferior" and continues the badge of "second class" citizenship.

The real tragedy, however, is that many black students and disadvantaged students in general who have been able to pursue law degrees through the Southern University Law Center will no longer have this opportunity, meaning that these persons would bear the ultimate burden of the desegregation process, that of exclusion. Just the opposite is contemplated by the Criteria, which hope for and which require more, not fewer, minority lawyers out of the process of desegregation. Even for those admitted, one has to wonder whether a school that would not invite them because it, as the court has said, "makes no effort to attract blacks," would present an environment in which such students could persist to graduation.

The court's concern about the claimed "inferiority" of the law school has no place in this analysis. It is only relevant, if at all, in ascertaining what must be done to make the schools comparable. The use of "first time bar passage rates" as a reason to impose new burdens on the opportunities for black students to obtain law degrees in the state is unrelated and indeed in conflict with the purposes of Title VI and the aims of desegragation. The fact is that virtually all of the Southern Law Center's graduates have passed the bar, although not all have done so on the first attempt. (See Affidavit A attached.)

We reurge our arguments with respect to selective admissions and the creation of a community college system with respect to the negative effect they will have on the entry of black students to four year colleges and the chance that they will have to obtain four year degrees.

If this court is concerned about the productivity of historically black colleges, all of which now do a far better job of producing qualified baccalaureate degree and law degree holding black citizens than the historically white colleges in the State, again, the answer is to strengthen the capacity of the historically white and black colleges to graduate more and better qualified black students.

The obvious threat of selective admissions as spoken eloquently to by Dr. Gary Orfield, an expert for Southern, is to limit the opportunity for access to four year colleges. Community colleges, Dr. Orfield says, are not an answer as a pathway to four year schools. And the experience in Florida with community colleges, the very records of the Florida study show, will do little more than prepare a few blacks for technical jobs, which preparation is already made available through the state's vo-tech system. It will not, as Dr. Orfield testifies, lead to an increase in four year degrees.

Despite Dr. McTarnaghan's representations otherwise, the plain experience in Florida belies his testimony on which this court relies. In any event, this court's allowance of the consideration of the ACT as a factor, without delimiting its use, and otherwise leaving the higher education system open to establish whatever standards it desires for college admission, will doubtless leave untold numbers of black students without even the hope of a college degree.

Further, the requirement of incentives for those schools who do well toward meeting desegregation goals is a positive contribution to the desegregation process only if the measures of progress are made institution by institution and in the light of the different circumstances of each university. The court's Order makes no requirements in this regard and by failing to do so, opens the door for new burdens to be placed on black students and PBI's.

The requirement of reverse incentives or taxes for those who fail to meet the goals is even more unrealistic

and will burden historically black colleges which will have the most difficult time of achieving goals of integration. Notions of inferiority, and of plain racism, will prevent the historically black colleges from moving as fast toward achieving integration goals as can historically white colleges. The outcome is a cruel catch 22. The schools that need more resources to be successful in achieving integration will predictably get less; and getting less, they will obviously continue to be less successful in achieving integration. The burdens placed on these institutions and the students who attend them will be disproportionate to those of students who attend historically white universities.

IV.

IN FAILING TO ACCEPT CERTAIN FINDINGS OF THE SPECIAL MASTER, THE COURT FAILED TO FOLLOW THE REQUIREMENTS OF RULE 53(E)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

As a general rule, the findings of fact of a special master will not be overturned by the district court unless they are clearly erroneous. Otherwise, the district court "shall" accept the master's findings. In its Order and Reasons, the court states that it reviewed the Special Master's findings of fact under the clearly erroneous rule.

The provisions of Rule 53(e)(2) of the Federal Rules of Civil Procedure provide in pertinent part as follows:

> "In an action to be tried without a jury, the court shall accept the master's findings of fact unless clearly erroneous . . . ."

The jurisprudence holds that where a special master has been appointed, pursuant to Rule 53, the clearly erroneous standard is the governing standard of review." *Day v. Wayne County Board of Auditors*, 749 F.2d 1199 (6th Cir. 1984).

In effect, the special master's findings and recommendations are governed by the same standard of review applicable to the district court's findings under Rule 52(a). *Williams v. Lane*, 851 F. 2d 867 (7th Cir. 1988). *Pullman-Standard v. Swint*, 456 U.S. 273, 285-290, 102 S.Ct. 1781, 1788-91 (1982); *Spaulding v. University of Washington*, 740, F. 2d 686, 696 (9th Cir. 1984); *NLRB v. Southwestern Bell Telephone Company*, 736 F.2d 166, 168, (5th Cir. 1984).

The clearly erroneous standard of review has been given a fairly strict interpretation by the courts. The United States Supreme Court in *United States v. United States Gypsum Company*, 33 U.S. 364, 68 S. Ct. 525 (1947), articulated the well-settled standard as follows:

> "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire record is left with a *definite and firm conviction that a mistake has been committed.*" 33 U.S. at 395. (Emphasis Added)

See, also, Bull's Corner Restaurant v. Direct Federal Emergency Management Agency, 759 F.2d 500, 502-503 (5th Cir. 1985) (relying on language of *McAlister v. United States*, 348 U.S. 19, 20, 75 S.Ct. 6, 8 (1954); *Kratzer v. Capital Marine Supply, Inc.*, 645 F.2d 477 (5th Cir. 1981).

Generally, the cases provide that where the findings are supported by substantial evidence, then they will not be found to be clearly erroneous. *Lane v. U. S. Department of Justice*, 767 F.2d 66 (3rd Cir. 1985); *Summerall v. Resolute Insurance Company*, 377 F. 2d 671 (5th Cir. 1969).

Additionally, the United States Supreme Court has held that where two permissible views of the evidence can be drawn, the fact finders choice cannot be overturned as clearly erroneous. *Anderson v. City of Bessemer City*, supra; *Amadeo v. Zant*, —— U. S. ——, 108 S. Ct. 1771

(1988). Although some cases have made distinctions between the strict reach of the clearly erroneous rule depending upon whether the subject findings were based on deposition testimony or live witnesses, recent cases hold that findings based on either kind of evidence should be accorded the same standard of review. *See, i.e., Tri-State Petroleum Corporation*, 845 F.2d 575 (5th Cir. 1988).

Thus, the clearly erroneous rule is strictly applied. The only exception to this standard is in a case where an erroneous view of the law has unfairly affected the findings drawn by the district court or the master. See, *U.S. v. Texas Education Agency*, 564 F. 2d 162 (5th Cir. 1977); *Hinson v. City of Dundee*, 682 F.2d 897 (5th Cir. 1982). In those instances where we object to the court's rejection of the findings of the special master, we also argue that the court has not noted this exception to the clearly erroneous rule in either instance and that otherwise this exception is inapplicable.

A. THE ORDERED MERGER OF THE SOUTHERN UNIVERSITY LAW CENTER INTO THE LSU LAW CENTER VIOLATES THE CLEARLY ERRONEOUS RULE.

In connection with the merger question, the Special Master found:

> "It (merger) has an appeal because planners can in one act combine proximate institutions with high white or black ratios into one racially balanced institution. But this kind of numbers game is often of short term benefit only. Institutions whose only commonality is in fact geographic proximity, may not stay racially balanced in the longer term. Faculty and administration are attracted to institutions because of its academic characteristics and mission orientation. Changing those dramatically upsets career choices and jeopardizes the professional relationships that make a school operate successfully. Merging in-

> stitutions with student bodies of significantly different levels of preparation places the students and faculty in difficulty relationships. While these difficulties may be worked out over time, merger remains a solution that poses considerable risk without any sheer benefits for desegregation or improved education."

Premised on this finding, the Special Master reasoned that a period of five years should be permitted in order to see if the remedies recommended by the order would work to eliminate the racial identifiability of the subject institutions. This recommended trial period, as the Special Master styled it, was applicable to those schools which he deemed obvious candidates for merger. See p. 59 of the Final Report of the Special Master. These "obvious candidates" were LSU A&M and Southern University A&M in Baton Rouge, Grambling-Louisiana Tech in Ruston, and UNO-SUNO in New Orleans, and LSU-SUSBO in Shreveport. The Southern University Law Center and the LSU Law Center were not even mentioned by the Special Master as candidates for merger.

It is easy to understand why the Southern University Law Center would be a less than obvious candidate for merger into the Louisiana State University Law Center. The Southern University Law Center has achieved full integration. In fact, it is the most integrated of the state's institutions of higher learning. According to Chancellor Agnihotri's Statement, the Southern University Law School is currently comprised of 50.3% black faculty and staff. and 49.7% white faculty and staff. The student body, he testified, is 58% black and 42% white. Indeed, throughout the lengthy negotiations surrounding this case and through hearings before the Special Master and through arguments on Special Master reports, nowhere was the suggestion made that the Southern and LSU Law Centers should be merged. Indeed, the Special Master's findings here respecting the risks versus the bene-

fits of merger ring truer here than in any other context. Not only does merger of these institutions pose the risk of the loss of opportunity for black students without the sure benefits of desegregation, but it poses a loss of certain desegregation already existing in the Southern University Law Center.

The findings of the Special Master respecting merger are not clearly erroneous by any stretch of the standard. They are supported by the testimony of each expert witness of each party that addressed the subject. In addition to the testimony of Dr. Wayne Brown and of Dr. David Wise cited in the Special Master's report in support of his findings, Southern University offered testimony against merger through statements and reports submitted by Dr. Elias Blake and by Dr. Walter Allen. No evidence has been offered by any party to these proceedings, in favor of merger or in support of the merger of these institutions that would contradict the findings of the Special Master. Thus, the Special Master's findings on the issue of merger must be sustained by this court. The court's assertion that ". . . the Panel perceives the focal issue concerning legal education to be different from the issue identified by the Special Master" falls well short from meeting the rigorous and unswerving demands of the clearly erroneous rule. That two legal educational institutions exist in the capital city of the state, one more highly selective in admissions than the other, provides no evidence of unwarranted program duplication; nor does it prove that both law centers, if efforts are made by LSU, cannot be integrated. Certainly, no witness testified before the Special Master that this was the case. The court is duty bound, therefore, to reverse and vacate its order respecting merger of the Southern University Law Center.

B. THE COURT'S REJECTION OF THE SPECIAL MASTER'S FINDING THAT A DISPROPORTIONATELY HIGHER NUMBER OF BLACK MEMBERS ON THE RECOMMENDED SINGLE GOVERNANCE BOARD WOULD PROTECT THE INTEREST OF BLACK STUDENTS AND HISTORICALLY BLACK STUDENTS DURING A LIMITED TRANSITION PERIOD VIOLATES THE CLEARLY ERRONEOUS RULE.

The Special Master's report concludes "the crucial question is the number of black members which at least for a period of transition under this new system might be appointed. The number of blacks assigned should exceed the percentage of blacks in the population of Louisiana for a limited period in order to insure both a commitment to the desegregation remedy this court must decree, and an acceptance by the public of the determination to implement the decree." Thus, the Special Master continued, ". . . for a transition period of five years the ratio of white to black should be adjusted to reflect the importance of the task ahead." (Special Master's Final Report, pp. 54-55) Further, on p. 58 of his Final Report, the Special Master states the finding " . . . the creation of a single governing board is a crucial step toward desegregation in this case, and yet its efficacy is threatened unless the interest of the PBI's and black students can be institutionally protected by the new board, the majority of whose constituents will be PWI's and white students. No party has proposed or suggested, and the Special Master is not aware of, any race neutral criteria that could guarantee the protection of black interest as effectively as mandating a substantial black membership on the board." Finally, on p. 60 of the Final Report, the Special Master states: "In sum, the proposed single board structure with an interim quota for minority membership is a constitutionally valid means to help insure that the loss of a separate

voice for the PBI's will not jeopardize the legitimate educational interest of the students they represent."

The court's general statement that the ". . . panel specifically rejects the Special Master's finding that desegregation necessitates a conscious effort to place a quota of blacks on the new board in excess of the percentage of blacks in the population . . .", fails to meet the clearly erroneous standard of review.

V.

THE REMEDY IS NOT TAILORED TO GEOMETRICALLY FIT THE VIOLATION

The remedy ordered in a desegregation case must be narrowly drawn to fit the violation of the right involved, here those protected by Title VI. See *Milliken v. Bradley*, 418 U.S. 717, 744 (1974); *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 420 (1977); see also, "Charges Foreword; Public Law Litigation and the Burger Court," 96 Harv. L. Rev. 4, 49 (1982); *City of Mobile v. Bolden*, 446 U.S. 55, 80-82 (1988); *City of Richmond v. J. A. Crossen Company*, —— U.S. ——, 109 S. Ct. 706 (1989)

Justice Scalia in his concurring opinion in *Richmond*, supra, at 721, states:

> "While thus permitting the use of race to declassify racially classified students, teachers, and education resources, however, we have also made clear that the remedial power extends no further than the constitutional violation." See, also, *Columbus Board of Education v. Penick*, 443 U.S. 449, 465 (1979); *Keyes v. School District No. Denver, Colo.*, 413 U.S. 189, 213 (1973).

The court has violated this well established principle in several respects. The Supreme Court has long recognized that "local autonomy of school districts is a vital national traditional." *Dayton Board of Education v.*

Brinkman, supra, 433 U.S., at 410, 97 S.Ct., at 2770. School desegregation orders, the Supreme Court has said ". . . are among the most sensitive encroachments on that tradition, not only because they affect the assignment of pupils and teachers, but also because they often restructure the system of education . . . . Judicial imposition on this established province of the community is only proper in the face of factual proof of constitutional violations and then only to the extent necessary to remedy the effect of those violations." *Dayton Board of Education v. Brinkman*, 43 U.S. 1348, 1353, 99 S.Ct. 24, 26 (1978).

If this is true for local school boards, how much more compelling must the showing be for a state's entire system of higher education? Here, the court declared the state's higher education governance board structure to be unconstitutional because the boards are "racially identifiable," thus "perpetuating illegal segregation in Louisiana higher education . . . ." We have disagreed that the court could make any such finding of unconstitutionality as it has here done on this purely Title VI case. But, if it could, as in the *Dayton* and *Columbus Board of Education* cases cited, supra, racially identifiable boards, particularly where mandatory segregation has long ago ceased, do not constitute the "factual proof of constitutional violations" there required. These Title VI violations, if even that, were curable by an order by this court requiring an end to such racial identifiability and decreeing the correct racial make-up. Further, the racial identifiability of the boards, which the court condemns as a constitutional defect, was sanctioned by the 1981 Consent Decree, which this very court approved. The court will recall that the Consent Decree provided:

> "Part II
>
> Commitments of Defendants
> *Section One: Governance*
>
> The State of Louisiana is committed to representation on each of the higher education boards without

regard to race. The state adopts the goal of increasing the other-race representatives on the Louisiana Board of Regents, the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College, and the Board of Trustees for State Colleges and Universities so that the composition of the membership of each board approximately reflects the racial composition of the state's population. *The state adopts, as an interim six-year goal of increasing the other-race representation on the Board of Supervisors of Southern University and Agricultural and Mechanical College so that the racial composition of the Southern University Board of Supervisors reflects the racial composition of the state's population inversely.*" (Emphasis Added)

Under these circumstances, the damning label of "racial identifiability" is hardly warranted, and certainly not "factual proof of a constitutional violation" within the meaning of the cited cases. The court incorrectly states the numerical membership of four college boards, at p. 6 of its Opinion and Order. Under Louisiana's Constitution, the Board of Regents is comprised of sixteen (16) members. LSU and the other management boards are comprised of seventeen (17), not eighteen (18) members, as the court states. Using these corrected figures, the racial makeup of each of the management boards "approximately reflects the racial composition" of the state (and in the case of Southern 'inversely') as the Consent Decree contemplated. The all too obvious fact is, in order to eliminate the racial identifiability of the boards, not even a law needs to be changed, let alone a state constitutional provision obliterated. To change the racial face of the state's boards, the act of one public official, the Governor of the State of Louisiana, can bring about this change. He simply needs to appoint more racially balanced boards as the State Constitution already permits, if indeed more balance is desired by the court or commanded by Title VI or the Constitution. As the Su-

preme Court makes clear, just because a constitutional violation or defect, as the court puts it, is found does not mean that a court can go to the outer limits of its powers to address the violation. A court may go only "to the extent necessary to remedy the effect of those violations", *Columbus Board of Education v. Penick*, 439 U.S. 1348, 1353, 99 S.Ct. 24, 26 (1978), 439 U.S. at 1357, 99 S.Ct., at 27.

Further, the Special Master found no evidence of a guaranteed "stand-off between the two 'systems' (LSU and Southern) and the rest of higher education" as the court states. None exists. Although Governor Roemer in his deposition spoke in general terms about "turf" battles in higher education, he admitted that he meant in political rather than racial terms.

In the context of the overall constitution of the State of Louisiana, it is easy to see that the people of the state made a renewed commitment to equality under the law. The 1974 Louisiana Constitution, of which the governance provisions are a part, were developed by an open, integrated convention, and received overwhelming biracial support in its adoption. It is a modern, forward looking document, and an honest attempt by the people of the state to eliminate the vestiges of a dual system. For the court to now say that the provision of the state's multi-board system, viewed in the context of the entire Louisiana Constitution, which openly and avowedly embraces desegregation, is a vestige of segregation, saddens the heart, and is mystifying to the head.

As we have stated previously, the question of a single governance board is one of educational policy. Where state educational policy conflicts with the adjudicated violation, courts most impose the least intrusive remedy available and justify the impact of the remedy they choose. *Whitcomb v. Chavis*, 403 U.S. 124, 160-161 (1971); see, also, "Note, The Voting Rights Act and Local School Boards; An Argument for Deference to

Educational Policy in Remedies for Voter Violation," 67 Tex. L. Rev. 139, 176.

The HEW Revised Criteria, aside from being the law on the subject, contemplate a fashioning of desegregation remedies under Title VI that are respectful of state's educational policy choice of a governance structure. The Criteria state:

> "Furthermore, from state to state significant differences are to be found and must be taken into consideration. In some states strong centralized 'system' exists including four year and two year institutions; in others, the four year and two year institutions report to separate boards; in yet, others each institution operates under its on independent board. While none of these differences relieves a state of its obligations under Title VI or its constitutional duties they must be taken into account in fashioning an appropriate set of Criteria to be applicable to six states." 43 Fed. Reg. 6660 (1978); see, also, Part IV, Sec. B of the Elements of a Plan in HEW Revised Sec. B of the Elements of a Plan in HEW Revised Criteria. 43 Fed. Reg. 6663.

Louisiana elects its judges, sheriffs and even assessors whereas many other states do not. Accountability is apparently more important to many Louisianans than efficiency.

By what authority then may this court deny the people of Louisiana its educational policy choice in higher education governance? Only when there is no less intrusive measure to redress constitutional violations. Plainly, Title VI, the Criteria published pursuant to it, and judicious directives to the educational boards of our state, provide a far less intrusive and, in the context of our democratic system of government, more effective remedy.

The ordered restructuring of the state's community colleges, judicially required university tiers and selective

admission standards, are other striking examples of the court's over broad remedies. These too must fall under the weight of cited authority. The court recites statistics regarding low graduation rates, the number of non-resident students attending PBI's and disparate college-going rates and college preparation levels for black and white students which it says "demonstrate additional constitutional defects inherent in and perpetuated by Louisiana's present system of higher education." But, these statistics represent more issues which the system of higher education must deal with, rather than ones which it originates or encourages. Whether they together amount to "factual proof" of constitutional violations is open to question. But if they do, they do not suggest as remedies a new, untried, judicially imposed system, without giving the people of the state a chance to choose from among many race-neutral educational approaches to deal with these problems. There is no warrant for federal take-over of Louisiana's system of higher education merely because constitutional defects are allegedly found. If this is true for state prisons, then it is at least equally, if not more, true for state colleges. See *Ruiz v. Estelle*, 650 F.2d 555 (5th Cir. 1981). There the court states:

> "Although it is within the court's authority to order that constitutional violations be rectified if a prison is to remain open, in large part the details of bringing a prison into compliance with the constitution should remain with state prison officials."

Here the court should require the state, through its governor and legislature, to address the "details" of bringing Louisiana's educational system into compliance with federal law.

VI.

SPECIFIC REQUIREMENTS FOR THE ENHANCEMENT OF HISTORICALLY BLACK COLLEGES IS REQUIRED BY LAW

The requirement stated in the Court's Order to include "non-formula expenditures for improving the quality of PBI's *whenever fiscally possible*, amounts to no order at all.

We believe that the language directing the State to provide non-formula funds to PBI's "whenever fiscally possible" falls short of the specificity requirement of Rule 65(d). Clearer and more definite language is demanded. See *Atiyeh v. Capps*, 449 U.S. 1316, 1316, 101 S.Ct. 829, 832 (1981), and the cases cited therein.

The law is also clear that "fiscal possibility" or "financial hardship" cannot serve as excuses for failing to meet federally guaranteed rights. *Liddell v. State of Misouri*, 731 F.2d 1294, 1320 (1984), *Swan v. Charlotte-Midlenberg Board of Education*, 402 U.S. 1, 15 (1971); *Williams v. Edwards*, 547 F.2d 1206, 1213 (5th Cir. 1977).

Enhancement of PBI's, is an essential ingredient of a plan to desegregate higher education. The special master concluded as much. The evidence in this regard was uncontradicted. In light of this clear record, the special master ordered that a percentage of the State's operating and capital budgets be set aside each year to enhance PBI's. Under the clearly erroneous rule as discussed above, the Court cannot reject the master's finding unless there is no substantial evidence on the record. Thus, here, the special master's findings on enhancement must be accepted by this Court.

Once accepted, however, the findings must be given significance. What profit is there to find that enhancement of PBI's is required and then not to order it. The

Court must render an Order here at least reinstating the special master's Order and guidelines on enhancement. Beyond that, this Court could hold a special hearing and receive evidence on the enhancement issue such as the Special Master did on other issues after the record of his hearings was closed. Barring that, detailed guidelines with specific timetables by which decisions regarding enhancement should be made should be ordered by the Court.

Again, we believe the HEW criteria provide the necessary framework. In order to disestablish a State's dual structure, the criteria provided in I(B) thereof:

> "B. Specify steps to be taken to strengthen the role of traditionally black instittuions in the state system.
>
> In support of the specific steps required by I.B., the plan shall include:
>
> 1. Commitments that necessary improvements will be made to permit the traditionally black institutions to fulfill their defined mission. These improvements will extend to physical plant and equipment; quality and range of program offerings; number and quality of faculty; student, faculty and professional staff services; student financial assistance, and other financial support.
>
> 2. Commitments that traditionally black institutions will have the resources (including those enumerated in item 1 above), which are at least comparable to those at traditionally white institutions having similar missions.
>
> 3. An assessment of the physical plant at traditionally black institutions; and
>
> 4. A detailed description of the resources, expressed in dollars and in numbers of personnel to be assigned, which the state system will provide (and the

source for such funds) in order to implement the steps specified in I.B. reported by year for the life of the step or activity.

C. Commit the state to take specific steps to eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions in the same service area.

To this end, the plan shall identify existing degree programs (other than core curricula) among institutions having identical or overlapping service areas and indicate specifically with respect to each area what steps the state will take to eliminate such duplication. The elimination of such program duplication shall be carried out consistent with the objective of strengthening the traditionally black colleges.

D. Commit the state to give priority consideration to placing any new undergraduate, graduate or professional degree programs, courses of study, etc., which may be proposed, at traditionally black institutions, consistent with their missions."

VII.

SPECIFIC REQUIREMENTS FACULTY AND STAFF MUST BE INCLUDED IN THE COURT'S ORDER

Successful faculty and staff integration will aid the success of student integration. Yet, no specific reference is made respecting this essential element of a desegregation plan. The court must declare specific guidelines in this regard. See HEW Revised Criteria, 43 Fed. Reg. 6662-6663.

VIII.

DR. MURRILL SHOULD NOT SERVE ON THE MONITORING COMMITTEE

This court made a wise statement when it directed the parties to submit nominees for service on the committee who were not connected with a party to the litigation. Southern took that to mean something more than a mere technical requirement. While Dr. Murrill is not now an employee of the LSU system, he has served as chancellor of LSU-BR. Doubtless he remains devoted to this institution, as is to be expected. And doubtless he continues to have a keen interest in the welfare of his former school, and close ties as well with many who still work there and with countless alumni of LSU. This will put undue pressure on Dr. Murrill in making decisions. But more, it will give the appearance of bias and favoritism, whether any exist or not.

Southern hestitates to raise this objection only because it may be misunderstood as a question about the integrity or character of Dr. Murril. Nothing could be farther from the truth. Dr. Murrill is admired and respected by the Southern University Board of Supervisors. It is simply that one would not ask another's father to pass judgment equally on his son and his neighbors' children and expect that problems of old loyalties to the son might not arise from time to time to cloud otherwise clear judgment.

No party must have an apparent or real advantage in matters before the monitoring committee because of who serves there. Dr. Murrill's membership on the monitoring committee, we fear, may give LSU an apparent advantage, and inspite of Dr. Murril's best efforts, a real advantage as well.

In another connection, Southern is concerned about the court's definition of the "substantial progress" standard assigned to the monitoring committee to gauge compliance with the court's order. This language too raises

a Rule 65(d) question. With so much depending on the monitoring committee's interpretation and application of this standard, it is imperative that the term be defined with a great deal of specificity so that each party may be given fair notice of how it must conduct itself in order to comply with the court's mandate.

CONCLUSION

It appears that the court's decision does not comport with legal requirements in several signicant respects. While Southern agrees with certain important provisions of the Order, its disagreements are significant. Southern urges the court to amend its Findings and Conclusions, to alter its judgment, and to take new evidence in accordance with Southern's observations herein. Southern desires a desegregated public higher education system. Its goal is to improve the racial balance of its institutions and throughout the system. But, it believes the law requires that this be accomplished without reducing current opportunities for black students, faculty and staff. Indeed, it must be done as opportunities for these victims of discrimination are enlarged. This is the court's obligation under Title VI as well.

Southern respectfully urges that its motions be GRANTED.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

Section "A"

UNITED STATES OF AMERICA

vs.

STATE OF LOUISIANA, *et al.*

MOTION AND MEMORANDUM TO AMEND OR ALTER ORDER UNDER RULE 59(e)

[Filed Aug. 1, 1989]

NOW COMES, the GRAMBLING STATE UNIVERSITY ALUMNI ASSOCIATION (GSUAA), through its counsel, THOMAS N. TODD, and moves this court to alter and amend its *Opinion and Order* issued on July 19, 1989, pursuant to Rule 59(e) of the Federal Rules.

In support of said Motion GSUAA offers the following:

1. The GSUAA repeats herein its request for a *specific* percentage to be established by this Court, of the State's Budget for enhancement (programs and capital outlay), for the Historical Black Institutions. The court's broad, general treatment of this matter is totally unacceptable. Especially objectionable, is the statement regarding non-formula expenditures for improving PBI's "whenever fiscally possible". p. 41. This *open end, non-specific weasel approach*, leaves open the potential for much mischief on the part of the State of Louisiana. Considering its *sorry* history in dealing with GRAMBLING STATE UNIVERSITY and SOUTHERN UNI-

VERSITY, we cannot and do not expect fairness from the State even if *ordered*. Certainly we do not expect it where what is ordered is unclear.

We also find it interesting that this court *rejects* as an "unacceptable" quota the Black membership of the Board, 7 out of 17 members suggested by the Special Master), where it appears to favor Blacks p. 17; but goes on to establish "quotas" and specific percentages througout the *Opinion* where it appears to be either neutral toward Blacks or tends to help Whites. For instance, LSU's Law School is to establish 10% admissions exception for Black students (not portion of Blacks in State population), p. 41; 15% exception are established to selective admissions, (10% for other race students; 5% for "such as athletes, students with other talents and alumni children); p. 36, for other race recruitment, a fixed percentage of each institutions's overall operating budget shall be set aside by the Board . .", p. 42.

We find it strange that the court is willing to be specific in those areas and yet allow an area as crucial as financing for PBI's to languish in a morass of generalities and uncertainty.

We urge here that specific amounts be established by this Court, after appropriate proceedings (hearings, budget submissions, etc.), for the enhancement (programs and capital), of PBI's. Without those specifics provided, it is our belief that once again the PBI's will be shortchanged.

2. GSUAA objects to and urges this court to reconsider the portion of the *Opinion and Order*, dealing with "incentives" to colleges and universities for meeting desegregation goals. p. 43. Under this plan, rewards will be given in scholarship and other monies to the colleges and universities meeting their desegregation goals as established by the Board. Those who do not meet their goals will receive "disincentives" or will be penalized.

It is felt that based upon the history of the State of Louisiana and other entities in this matter, this plan will impose an *uneven, unreasonable* and *inequitable* burden upon the PBI's. We have no reason to believe that the plan will be administered fairly. Further, this court's own *Opinion and Order* regarding Southern University's Law Center and LSU's Law Center demonstrates how widespread the inequities are when it comes to PBI's, even when the PBI's comply with specific requirements. Even though LSU's Law Center is *segregated*, with almost *no minority participation*, obviously in violation of Federal Law; and Southern University's Law Center, although desegregated, in compliance with Federal Law, this court saw fit to *punish* Southern University's Law Center for compliance and reward LSU's Law Center for its violation. This type of attitude is what has harmed Black Institutions throughout their existence. We have no reason to believe that an "incentive" plan would be administered any differently.

Consequently, we urge the Court to revise the "incentive" program provided by the *Opinion and Order* to either totally eliminating it, or in the alternative applying the penalty portion only to *White institutions*. After so many years of inequality, for the PBI's to be treated equally in this area is not equality, but yet another form of inequality.

3. GSUAA is opposed to the appointment of Paul W. Murrill, a former Chancellor of LSUBR to the Monitoring Committee. Without voicing an opinion on the qualifications of Murrill or any of the other two members of the Monitoring Committee, it is GSUAA's position that he should not serve because of his *prior affiliation with LSU*. Since, what we are seeking is the appearance of "fairness" as well as "fairness" itself, this appointment can meet neither criteria. Therefore, we urge that he be removed and a suitable replacement be found with no prior

relationship with any entity of the State of Louisiana, or any other party in this case.

4. GSUAA is opposed to merger of institutions as a remedy, at any time, now or in the future.

WHEREFORE, GSUAA prays that this court reconsider the *Opinion and Order* issued herein for the reasons set out above, and that:

1. a hearing be held immediately on this and any other motion filed for reconsideration; and
2. That all matters ordered in the *Opinion and Order* be STAYED pending the outcome of Hearings on these motions.

Respectfully submitted,

/s/ Thomas N. Todd
THOMAS N. TODD
Attorney for Grambling State University Alumni Association

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Motion and Memorandum to Amend or Alter Order Under Rule 59(e), upon the following counsel by U.S. Mail, prepaid, addressed as followed on July 28, 1989.

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This the 28th Day of July 1989.

/s/ Thomas N. Todd
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Association

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

UNITED STATES' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND JUDGMENT

The United States, plaintiff herein, respectfully files the instant motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and requests this Court to reconsider its opinion and order entered in the instant litigation on July 19, 1989.

The United States respectfully requests this Court to reconsider the below delineated portions of the above-described order: the merger of the LSU and SU Law Schools, the lack of specificity of the provision of enhancement funds, the 10% set aside for special admissions, and the lack of specificity in the equal employment opportunity provisions for faculty and staff, and in the monitoring and termination provisions. Additionally, the United States requests this Court to clarify the schedule for the disbanding of the four governing boards and the implementation of the single board.

Wherefore, the United States, reserving unto it all rights of appeal respecting the instant order, respectfully requests this Court to reconsider and alter or amend

it July 19, 1989 Order as more fully described in the attached memorandum.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND JUDGMENT

On July 19, 1989, the Court entered its Opinion and Order in this protracted litigation invoking the desegregation of the Satte of Louisiana's public higher education system. The Opinion and Order adopted, except as expressly modified, the Special Master's Final Report and Proposed Order of May 26, 1989.

The United States, plaintiff herein, respectfully requests this Court to reconsider and to alter or amend its July 19, 1989 Opinion and Order as set forth below.

DISCUSSION

A. The Court Should Reconsider Its July 19, 1989 Opinion And Order Requiring The Merger of The Two Law Schools.

The Special Master at pages 35-38 of his final report found that merger is an extreme remedy that should be resorted to only if other remedies have failed [1] and that merger remains a solution that poses considerable risks

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[1] Special Master's Final Report, page 36.

without any sure benefits.[2] Further, the Special Master recognized that under the circumstances of this case an opportunity must be provided to make every effort to integrate before extreme solutions are considered.[3] Finally, at page 96 the Special Master found that the Southern Law Center is desegregated—unlike the LSU Law Center. The Special Master at pages 96-99 considered the merger of the two law centers and found merger inappropriate at this time.

The Court at page 7 of its July 19, 1989 Opinion and Order affirms the Special Master's ruling that this case is about desegregation. Consistent with the finding of the Special Master, at page 25, the Court found that the Southern Law Center is desegregated and, at page 26, the Court found that LSU's failure to desegregate its law school is a function of its admissions policy that makes no effort to attract black applicants.

Yet, contrary to the conclusion of the Special Master recommending against any mergers or consolidations at this time, the Court concluded that the two law schools should be merged over the next five years. Based upon the reasons discussed below, we request that the Court reconsider its order that the two law schools be merged.

1. In *Milliken* v. *Bradley*, 418 U.S. 717, 738 (1974), the Supreme Court, in reaffirming the principles established in *Swann* v. *Charlotte-Mecklenburg Board of Educaiton*, 402 U.S. 1 (1971), stated that "a federal remedial power may be exercised only on the basis of a constitutional violation and, as with any equity case, the nature of the violation determines the scope of the remedy." Citing *Swann*, 402 U.S. at 16. "Once a constitutional violation has been found, the remedy must be tailored to cure the condition that offends the Constitution."

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[2] Special Master's Final Report, page 37.

[3] Special Master's Final Report, page 38.

We believe that the constitutional violation to be remedied is the failure of LSU and the State to desegregate the LSU Law Center "and therefore we believe that the remedy [with respect to the two law schools] must be tailored to cure the condition that offends the Constitution." The record clearly establishes, and the Court found, that the "Southern Law Center is desegregated, with a student body of 58% black and 42% white and a faculty (including part-time) which is virtually 50/50." On the other hand, the LSU Center, even after operating for six years under the 1981 consent decree, "has a minuscule percentage of black students" at this time, and thus LSU —which was established for whites—continues to reflect the institution's historical white mission. Accordingly, as recommended by the Special Master, defendants should be required to desegregate the LSU Law Center.

A corollary to the principle of limiting the remedy to the wrong is that more drastic remedies should be used only if there exists no alternative. Merger is such a drastic remedy and should be utilized only if other approaches are not available. Here, other effective approaches to desegregate the LSU Law Center have not been tried; alternatives continue to exist which are less restrictive than the merger of the law schools. (See United States Proposed Plan, p. 29.) We believe that the law, as discussed above, and the record in this case—particularly the findings of the Special Master—do not support the conclusion to order an immediate merger of the two law schools. Inasmuch as both the Special Master and the Court determined that it would be appropriate to allow the new board to determine remedial measures to eliminate program duplication in all other areas, we believe that the law schools should not have been treated differently; nothing in the record justifies such different treatment. Appropriate remedies far less than merger—actually the closure of Southern law school—are available. For example, we believe that it would be appropriate for the new board to determine that two public law schools

in different places—*e.g.*, one in Baton Rouge and the other in New Orleans—would be an effective approach for eliminating the racially dual law school programs.

2. In the government's view, one of the primary issues in this case is "equal and increased access for minority students" with respect to graduate and professional programs. *Adams* v. *Richardson*, 480 F.2d 1159, 1165 (D.C. Cir. 1973); *Adams* v. *Bennett*, 675 F. Supp. 668, 678 (D.D.C. 1987). Even a cursory review of the state-operated graduate and professional programs reveals that the State's historically white institutions have failed miserably in providing such access for minority students. Specifically, the State's performance under the 1981 consent decree—under which the State made but failed to meet its affirmative commitments to increase minority access—make it dubious to rely solely on the State's efforts at traditionlly white institutions to provide this increased access for minority students. The elimination of Southern's law school—which has provided equal access for all students as a desegregated institution—is likely to be counterproductive inasmuch as it will decrease minority access. We believe that the Court should adopt the remedial approach recommended by the Special Master, who recommended that affirmative steps be taken to recruit and admit qualified students to the LSU law school, and that Southern, which has successfully desegregated its law school, assist by considering cooperative programs with LSU.

3. An equally important point is that minority students should not be made to shoulder a disproportionate share of the desegregation burden. But that is what the merger here will inevitably entail. In *Adams* v. *Bennett*, citing *Adams* v. *Califano*, 430 F. Supp. 118, 120 (D.D.C. 1977), the D.C. Circuit stated:

> The process of desegregation must not place a greater burden on Black instituitons or Black students' opportunity to receive a quality public higher education.

> The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks. Without suggesting the answer to this complex problem, it is the responsibility of HEW [now Department of Education] to devise criteria for higher education plans which will take into account the unique importance of Black colleges and at the same time comply with the Congressional mandate.

As required by *Adams* v. *Bennett*, the Department of Education developed the Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (Revised Criteria), 43 Fed. Reg. 6658 *et seq.* Among other things the Revised Criteria provide:

> F. The unique role of the traditionally black colleges
>
> In keeping with the instructions of the Court, the criteria recognize the unique importance of traditionally black colleges in meeting the educational needs of black students. More than 80 percent of all black college graduates have been trained at black colleges in the mid-seventies continue to graduate almost forty percent of all blacks who receive college degrees.
>
> Thus it is with good reason thta the Court of Appeals in *Adams* recognized the need to take into account "the special problems of black colleges." * * * [T]hese Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education, 480 F.2d at 1164-1165.
>
> Again in 1977, the District Court [in *Adams*] in its Second Supplemental Order, p. 4, quoted the above language of the Court of Appeals and went on to state:

> The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education. The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks. Without suggesting the answer to this complex problem, it is the responsibility of HEW to devise criteria for higher education desegregation plans which will take into account the unique importance of Black colleges and at the same time comply with the Congressional mandate.
>
> The Department does not take this language to mean that the traditionally black institutions are exempt from the Constitution or the requirements of Title VI. To the contrary, traditionally black and traditionally white institutions are subject to the same constitutional and congressional mandate to provide an education to all citizens without discrimination or segregation. White and black institutions are to function as part of a unitary system free of the vestiges of state imposed racial segregation. However, as the Court has instructed, the transition to a unitary system must not be accomplished by placing a disproportionate burden upon black students, faculty, or institutions or by reducing the educational opportunities currently available to blacks.

It would be ironic indeed if the end of this suit were the *diminishing* of education opportunity for minority students. Here, we believe that the Court has placed a disproportionate burden on Southern University and the students for whom Southern's law school has traditionally provided equal access.

4. Finally, the Court concluded (Order at page 27) that Southern's law school should be eliminated in large part because:

> . . . as long as the two institutions of disparate quality exist, the State will continue to produce a secondary class of lawyers unable to compete fully in the professional context. Given the racial composition of the two law schools, the negative impact of this disparity will fall largely upon the black law student population, and given the consent decree experience, a simple provision of funds will not resolve this problem, even assuming such funding is a realistic possibility.

But the record in this case shows that both Southern University and Grambling State University were established as "separate and *unequal*" components of the racially dual system, and the Special Master correctly found that "enhancement funds [for Southern University and Grambling State University] may be necessary for a variety of purposes." To allow, instead, the State to benefit from its unconstitutional action in terms of its historically treatment of Southern University is inconsistent with the law and any sense of "fair play." Desegregation should not be achieved by closing historically black institutions.

For all of the above reasons, the conclusion to eliminate the Southern University law school should be altered and the general approach recommended by the Special Master for desegregating legal education should be adopted.

B. The Court Should Reconsider Its July 19, 1989 Opinion And Order Requiring A Ten Percent Admissions Exception For Other-Race Students.

The Court's Opinion and Order requires that there be a ten percent "admissions exception" "for admitting other race students (that is, black students at PWIs and

white students at PBIs)" (slip op. 36; see also *id.* at 27). The Opinion and Order also provides later that the new board "shall set annual integration progress goals for each institution," "shall develop financial incentives for institutions that meet or exceed their annual goals," and "shall also consider employing 'reverse incentives' or taxes for institutions which consistently fail to meet their goals" (*id.* at 43). The United States strongly opposes the use of racially-preferential admissions exceptions, and a system of rewarding and punishing institutions depending on the extent to which racial goals are met. As discussed below, we do so both as a matter of constitutional law, and as a matter of sound desegregation policy.

The Supreme Court has made clear that racial preferences are highly disfavored. Such preferences are permissible only if they pass "strict scrutiny," *i.e.*, are "narrowly tailored" to a compelling governmental interest. *City of Richmond* v. *J.A. Croson Co.*, 109 S. Ct. 706, 720-723 (1989) (plurality opinion); *id.* at 1 (Scalia, J., concurring in the judgment). That test is not met in this case. While the Court is acting pursuant to a compelling governmental interest—the remedying of past discrimination in the Louisiana higher education system—these preferences are clearly not narrowly tailored to that end.[4]

Most fundamentally, remedying the wrong in this case does not require that a racial goal be met. The Constitution does not require, either as a matter of substantive right (*Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 433-434 (1976); *Spencer* v. *Kugler*, 404 U.S. 1027 (1972)) or as a matter of remedy (*Milliken I*, 418 U.S. at 740-741; *Swann*, 402 U.S. at 24) any particular degree of racial balance even in the primary and secondary school context. It follows *a fortiori* that such

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[4] At a minimum, given the gravity of this provision, we think that the court should explain why it believes these racial preferences to be constitutionally justifiable.

a balance is not required in the higher education context, where students are not assigned to particular schools in the first place. Cf. *Bazemore* v. *Friday*, 478 U.S. 385, 408 (1986). Accordingly, a remedy that seeks to obtain such a balance cannot be said to "directly address and relate to the constitutional violation itself." *Milliken II*, 433 U.S. at 282. In those cases where the Supreme Court has upheld the use of remedial racial preferences, it did so *not* because it believed that a particular racial mix was necessary, but because it was clear that such preferences were essential to stop ongoing, "egregious" discrimination by the defendant. *United States* v. *Paradise*, 107 S. Ct. 1053 (1987); *Sheet Metal Workers* v. *EEOC*, 478 U.S. 421 (1986).[5]

The admissions exceptions also fail narrow tailoring because there are available alternative remedies and because they have an impermissible effect on innocent third parties. *United States* v. *Paradise*, 107 S. Ct. at 1073 (plurality opinion); *Sheet Metal Workers* v. *EEOC*, 478 U.S. at 475 (plurality opinion); *Wygant* v. *Jackson Board of Education*, 476 U.S. 267, 283-284 (1986) (plurality opinion) (where other "less intrusive means of accomplishing similar purposes * * * are available," a broader remedy is not narrowly tailored). If the measures proposed in the United States' plan—strong recruitment efforts, racially-neutral admissions exceptions and a scholarship policy for disadvantaged students, elimination of program duplication, and enhancement of TBIs—are undertaken, a constitutionally sufficient remedy will be in place. It is therefore unnecessary to deny a spot

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[5] In this regard, we stress that, while a state may be able to afford limited racial preferences in pursuit of a "diverse" student body, a court in the context of a desegregation suit must tie such preferences to the remedy of an underlying wrong. *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), is therefore distinguishable; in all events, the setting aside of a particular number of slots for which only members of a particular race may compete is precisely the sort of preference that *Bakke* struck down.

at Grambling for a black student because of race, or at Louisiana Tech for a white student.

The exceptions that the Court proposed are, indeed, a step backward. No one in this litigation has asserted that any college in Louisiana currently denies admission based on race.[6] The Court's new plan, however, will do precisely that. Thus, while the Court acknowledges that "the focus of this litigation is not institutions but students" (slip op. 13, citations and footnote omitted), it would limit the rights of the latter in order to achieve better numbers in the former.

Besides being unconstitutional, the racially preferential exceptions policy will undermine the goals it purports to further. The financial incentives will not only ensure that these "goals" become quotas, they will also ensure that TWIs continue to receive more state money than TBIs. The fact of the matter is that it will be much easier for TWIs to entice black students to attend them—as noted above, half already do so—than it will be for TBIs to entice white students to attend them. Thus, TWIs will find it relatively easy to receive the additional money and avoid the penalties which the Court contemplates, but the TBIs will have to run very hard to stay in the same place. We note in this regard that Southern University also opposes the exceptions policy (Special Master's Proposed Plan, at 29).

Finally, there is no better way to ensure the continuation of racial resentment and stereotyping than by requiring that TWIs accept as ten percent of their student body minority students who would not otherwise have been accepted. See, *e.g.*, T. Sowell, *Education: Assumptions Versus History* 130-152 (1986). The Court correctly acknowledges the high failure rates at Louisiana's colleges (slip op. 9), and states that it wishes neither to "damage the quality" of education nor "require any lowering of academic requirements for those students who

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[6] Indeed, the Court acknowledges that about half of Louisiana's black entering freshmen elect to attend PWIs (slip op. 13).

do gain admission" (*id.* at 41, in the context of legal education). But a ten percent exceptions requirement, coupled with "incentives" and "reverse incentives" hardening the requirement into a quota, will inevitably have this effect. This will serve neither the students nor the cause of higher education in Louisiana.

C. The Court Should Reconsider Its Order Regarding Enhancement Funding And Adopt The Recommendation Of The Special Master.

The Special Master, at pages 103-107, found that enhancement dollars must be made available, that enhancement funds should be set aside and identified, that increases in forthcoming spending should consider enhancement funds first, that a specific percentage of new funds should be designated for enhancement, and that a budget for enhancement should be established. The Special Master considered the State's "fiscal crisis" and found that, since the level of such a crisis was undetermined, all cuts and increases must be made consistent with desegregation goals.[7]

The United States submits that the Court can and should require the filing of appropriate budget information by defendants followed by appropriate evidentiary hearings, so that it can order specific funds to ensure that schools of like mission have like facilities, enabling them to have a reasonable opportunity to attract other race students. Conversely, the United States believes that the portion of the Court's order (at page 41) including non-formula expenditures for improving the quality of PBIs "whenever fiscally possible" is unclear, and allows the remedy of a constitutional violation to hinge on the violator's determination of what is "fiscally possible" to do. We further submit that the allgeed lack of funds is no basis for continuing the existence of vestiges of

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[7] Final Report, page 107.

the former unlawful dual system. Federal courts are authorized to enjoin state officials to conform their conduct to the requirements of federal law, notwithstanding a direct and substantial impact on the state treasury. *Ex Parte Young*, 209 U.S. 123 (1908); *Edelman* v. *Jordan*, 415 U.S. 651, 667 (1974); *Milliken* v. *Bradley*, 433 U.S. 267, 289 (1977).

D. The Court Should Reconsider Its Order With Respect To The Employment And Recruitment Of Other-Race Faculty, Administrators, And Professional Staff Members.

The Court's July 19, 1989 Opinion and Order does not contain clear language on defendants' obligation with respect to desegregating the faculty and the administrative and professional staffs of all institutions. Indeed, the Order merely requires that each institution "shall develop a strong, written equal opportunity policy, both as to students and employees." In our view, the Order should be amended to require explicitly that defendants desegregate the staffs and faculties of all public institutions by aggressive recruitment of other-race employees and by a nondiscriminatory assignment policy, as set out in our proposed plan (pages 20, 23-25).

E. The Court Should Clarify the Timing For the Current Board's Termination.

Finally, we request the Court to clarify the timing for disbanding the four governing boards and the creation of the single governing board. The order requires the four governing boards to cease operation in thirty (30) days and their powers to be consolidated into a single board within the thirty (30) days period. The order provides for alternatives for the creation of the single board if the Governor cannot complete appointment within the thirty days. Although the four governing boards are terminated automatically, the order is silent

concerning the identity of an entity or person having responsibility for the institutions if the four boards cease to exist in thirty days and the Governor has not appointed or the legislature has not confirmed board members within the thirty days.

F. The Monitoring Provision Should Be Reconsidered and Amended.

The Court's Order is unclear with respect to the duration of the plan. It appears that defendants are required to operate under a plan for five years, but there is no terminal date. We think it is desirable to include in the Order a mechanism for the orderly termination of this lawsuit upon the achievement of a fully desegregated system. We proposed such a mechanism in our plan (filed 1/24/89, pages 34-35).

Moreover, the procedures established for the monitoring committee do not specifically provide for any involvement by plaintiff in the monitoring process, although we do not think that this was the intention of the Court. We think it is important to ensure that any problems with compliance and achievement of the goals of the decree be identified and remedied as soon as possible, in the interest of rapid desegregation and to ensure that the remedial phase of this lawsuit not last indefinitely. In this regard, therefore we, believe that the Opinion and Order should be amended as follows:

a. The order should require the United States and other parties to review the report of the monitoring committee annually and to provide in writing to the committee and to the Court within 60 days after receiving said report any comments about progress or lack of progress in achieving desegregation.

b. If upon reviewing the annual report, the United States or any other party has concerns which it has expressed in writing, the United States, and any other party who desires to do so, shall meet with the

monitoring committee for the purpose of discussing its concerns and offering any suggestions it may have on how problems areas may be addressed. Should the United States be unable to resolve any such concerns amicably, it shall be entitled to petition the Court for the purpose of discussing said concerns with the Court and scheduling a hearing, if necessary.

CONCLUSION

Wherefore, the United States respectfully requests that the Court reconsider its Opinion and Order and alter or amend its Opinion and Order consistent with our suggestions above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing corrected version of the United States' Motion and Memorandum in Support of Motion for Reconsideration and To Alter or Amend Judgment has been sent to the following counsel by airborne courier.

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APPENDIX D

Nos. 85-93 and 85-428

In the Supreme Court of the United States

OCTOBER TERM, 1985

P. E. BAZEMORE, *et al.*,
Petitioners,
v.
WILLIAM C. FRIDAY, *et al.*

UNITED STATES OF AMERICA, *et al.*,
Petitioners,
v.
WILLIAM C. FRIDAY, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE FEDERAL PETITIONERS

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* * * *

III. THE SERVICE RETAINS JOINT RESPONSIBILITY FOR THE SELECTION OF COUNTY CHAIRMEN, AND IS THEREFORE LIABLE UNDER TITLE VII FOR DISCRIMINATION IN THOSE SELECTIONS

The private petitioners invite this Court to consider whether Title VII permits an employer to delegate its hiring decisions to a third party which invariably acts in a discriminatory manner (85-93 Pet. 49-55). We submit, however, that this question is not properly presented here. The court of appeals concluded that the Service was not "separately responsible" for the selection of county chairment (Pet. App. 412a). It also noted, however (Pet. App. 403a), that "the agreement of the Extension Service and the County Commissioners is required in order to fill the [county chairman] vacancy." The district court explicitly so found: "all appointments are worked out jointly between the Extension Service and the [county] commissioners and no official action can be taken unilaterally by either party" (Pet. App. 77a). No party challenged this finding on appeal, and it is well supported by the record (see, *e.g.*, J.A. 163; C.A. App. 1690). The only question properly presented in this context is thus whether each participant in a joint employment decision must comply with the dictates of Title VII. It requires no extended analysis to demonstrate the fallacy of permitting each participant to avoid liability solely by showing that it shared the decision with another. *E.g.*, *Farmer* v. *ARA Services, Inc.*, 660 F.2d 1096, 1104 (6th Cir. 1981); *Robinson* v. *Lorillard Corp.*, 444 F.2d 791, 799 (4th Cir.), cert. dismissed, 404 U.S. 1006 (1971); see *Atonio* v. *Wards Cove Packing Co.*, 768 F.2d 1120, 1125 (9th Cir. 1985); cf. *McDonald* v. *Sante Fe Trail Transp. Co.*, 427 U.S. 273, 284-285 (1976). It was accordingly inappropriate for the court of appeals to focus on the statistics regarding the applicants identified by

the Service for consideration for promotion, rather than on the statistics with respect to the final choices that were made.[38] In sum, a remand for reconsideration of the appropriate statistics may be warranted, but this record provides no occasion for consideration of an employer's liability for decisions made without its participation.

If the Court nevertheless reaches the issue urged by the private petitioners, we submit, for the reasons explained in our petition, that *General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375 (1982), makes clear that an employer cannot properly be held vicariously liable under Title VII.

IV. PRIOR SEGREGATION IN THE 4-H AND EXTENSION HOMEMAKER CLUBS WAS FULLY CURED BY RESPONDENTS' ADOPTION OF A GENUINELY NONDISCRIMINATORY ADMISSIONS POLICY

The narrow legal question raised by private petitioners is whether a state actor has failed, as a matter of law,

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[38] See note 12, *supra*. The court did refer briefly to the ultimate success rates of black and white applicants, and determined, "[u]sing the district court's method of calculation," that the relative rates did not raise an inference of disparate treatment (Pet. App. 416a), but the court used incorrect figures in calculating those rates. The court's analysis was also flawed by its inclusion of positions for which there were no white applicants while excluding positions for which there were no black applicants; of the 5 blacks selected, only 2 were in competition with a white applicant, in each case a white female (see note 8, *supra*). In addition the court failed to take account of the fact that although the Service in the vast majority of cases recommended only a single candidate to the county, it never recommended a black candidate without also recommending a white candidate, if one was available. In each instance where both a white and black candidate were recommended, the white candidate was always selected even though the stated reason for recommending more than one candidate was that they were equally qualified (C.A. App. 914-915).

to satisfy its affirmative duty to desegregate a formerly de jure system because it retained a free choice admissions system the result of which is that some all white and all black 4-H and extension homemaker clubs continue to exist (85-93 Pet. i-ii, Question 3).[39] There is no issue in this Court concerning either the validity of the lower courts' factual conclusion that the 4-H and extension homemaker clubs have been operated in a purely nondiscriminatory manner since at least 1965, or that the respondents have taken no action designed to perpetuate the prior segregation or otherwise to have a segregative effect.[40]

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[39] The precise extent of racial mixing within the 4-H and extension clubs is unclear. Between 1972 and 1980, the total number of integrated (at least one member of a different race) 4-H Clubs in mixed communities grew from 586 to 1442, while the number of single race units in mixed communities remained fairly constant (892 in 1972; 880 in 1980) (C.A. App. 1807, 1140). Of all participants in 4-H Clubs in the state, 15.7 percent belong to these 880 one-race clubs (GX 11). As of 1972, the last year for which statistics are contained in the record, only 22 out of 1866 homemaker clubs were integrated (J.A. 103).

[40] The court of appeals found that "[t]he record is totally devoid of any proof of discrimination with respect to services provided by any 4-H or Extension Homemaker Club" (Pet. App. 424a n.128). The district court likewise found no evidence of any discrimination in services or membership (Pet. App. 165a-185a) and found that any racial imbalance existing among the clubs resulted exclusively from the wholly voluntary and unfettered choice of private individuals (Pet. App. 172a). On this basis, the district court distinguished two other cases which found segregated extension-related clubs had not been dismantled (Pet. App. 175a). Specifically, the district court noted "that the Extension Service had had a policy that all voluntary clubs be organized without regard to race and that each club certify that its membership is open to all persons regardless of race; that it instructs its agents to encourage the formation of new clubs without regard to race; that it publishes its policies in the media; that all of its club work and functions above the local community level are being conducted on a fully integrated basis; that its 4-H camps are fully integrated and have been for over ten years and that no person has been denied membership in any club on account of race" (Pet. App. 181a). The

Accordingly, we agree with the court of appeals' conclusion that the "mere existence of all white and all black 4-H and Extension Homemaker Clubs in some racially mixed communities violates neither Title VI nor the equal protection clause of the Fourteenth Amendment" (Pet. App. 424a n.128).[41] Prior decisions of this

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district court found that "[i]n working with the clubs all [Extension] agents work across racial lines" (Pet. App. 169a n.53). Although the United States and private petitioners introduced evidence that the Service had assigned agents to clubs on a racial basis until 1974 (J.A. 138-139; Tr. 1078-1079, 1994-1995, 2019-2020, 2025), they did not present the district court with a proposed finding of fact on this subject. We do not understand petitioners to argue that the court's findings were clearly erroneous, or that the Service has taken any action after the de jure period that has "serve[d] to perpetuate or re-establish the dual * * * system." *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 460 (1979). No evidence relating to the racial composition of clubs formed after the de jure period was introduced at trial, because neither the United States nor private petitioners drew any distinction between clubs formed before or after this period.

[41] The discrimination prohibited by Title VI is coextensive with that proscribed by the Constitution; our discussion will therefore address this question in terms of constitutional requirements. *Guardians* v. *Civil Service Commission*, 463 U.S. 583 (1983). The United States Department of Agriculture has promulgated regulations pursuant to Title VI which require that federal aid recipients that have "previously discriminated against persons on the ground of race, color or national origin, * * * must take affirmative action to overcome the effects of prior discrimination." 7 C.F.R. 15.3(b)(6)(i). As discussed in the text *infra*, where, as here, admissions are traditionally the product of private voluntary choice, an entity covered by Title VI has fulfilled this requirement to take affirmative action to overcome the effects of prior segregation in admissions when it has established a genuinely nondiscriminatory admissions system. Since the regulation simply embodies this statutory and constitutional requirement, the lower courts' conclusion that the Service has created such a nondiscriminatory system in the 4-H and extension homemakers clubs establishes that it is in compliance with these regulations.

The Department of Agriculture sent affirmative action "guidelines" in 1972 and 1973 to the Directors of all Extension Services

Court in the school desegration area demonstrate that a state which has insured that all its practices relating to admissions are truly race-neutral need not assure a particular racial mix [42] or eliminate personal choice in order to cure its prior segregation.

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expressing the Department's views concerning steps those Services should take with respect to desegregating 4-H and extension homemaker clubs. These guidelines, on their face, specifically exempt the respondent Extension Service from coverage because of the pendency of this litigation (Pet. App. 173a n.55; C.A. App. 1905, 1914-1958). It is also undisputed that these guidelines are, in any event, nonbinding. The stated purpose of these guidelines is to set forth standards by which Extension Services will "assure that all Extension 4-H and other youth programs * * * are provided to all clientele on a nondiscriminatory basis without regard to race, color, or national origin" (C.A. App. 1941; see also C.A. App. 1923, 1864-1865, 1888). To accomplish this goal of nondiscrimination, the guidelines state that formerly segregated Extension Services should establish "that *all reasonable efforts have been made* to recruit individuals from all racial groups represented; and reasons for individuals not desiring to become members of such clubs in interracial settings are not based upon race, color or national origin" (C.A. App. 1905 (emphasis in original)). Respondents did not institute one of the recruitment efforts specified by the Department as part of their affirmative effort to ensure nondiscrimination: personal visits by Extension staff members to potential minority participants in the clubs (C.A. App. 1910). As a general enforcement policy, the guidelines' "personal visit" standard is an appropriate and beneficial recruitment measure to assure both the Department and the covered Extension Service that all persons are aware that clubs are truly nondiscriminatory, so that the "reasons for individuals not desiring to become members of such clubs in interracial settings are not based upon race." However, this component of the Department's affirmative action program is not an absolute prerequisite to finding that the clubs are truly nondiscriminatory. The district court's findings of nondiscrimination and that any racial imbalance is solely attributable to the free choice of persons unfettered by subtle racial barriers are not clearly erroneous. For this reason, the United States did not appeal the district court's decision on this issue.

[42] Although private petitioners do not expressly state that any particular racial mix is required, their assertion that the state's efforts have "failed" (85-93 Pet. i-ii) can only be premised on the

It is well established that the Constitution does not require, either as a matter of substantive right (*e.g.*, *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 433-434 (1976); *Spencer* v. *Kugler*, 404 U.S. 1027 (1972)) or as a matter of remedy (*Milliken* v. *Bradley* (*Milliken I*), 418 U.S. 717, 740-741 (1974); *Swann* v. *Bd. of Educ.*, 402 U.S. 1, 24 (1971)), any particular degree of racial balance in a state's activities. Rather, the Constitution requires that government refrain from any action intentionally designed to exclude or segregate persons on the basis of race. *Dayton Bd. of Educ.* v. *Brinkman* (*Dayton I*), 433 U.S. 406, 413 (1977); *Washington* v. *Davis*, 426 U.S. 229, 239 (1976). It is not disputed that the Service engaged in such deliberate segregation after this Court's decision in *Brown* v. *Bd. of Educ.* (*Brown I*), 347 U.S. 483 (1954), and thus "automatically assumes an affirmative duty 'to effectuate a transition to a racially nondiscriminatory * * * system.'" *Keyes* v. *School District No. 1*, 413 U.S. 189, 200 (1973), quoting *Brown* v. *Bd. of Educ.* (*Brown II*), 349 U.S. 294, 301 (1955).[43]

Such remedial efforts are necessary "to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct" (*Milliken I*, 418 U.S. at 746) by eliminating the condition that violates the Constitution and the conditions that flow from such a violation. *Milliken* v. *Bradley* (*Milliken II*), 433 U.S. 267, 282 (1977). See *Dayton I*, 433 U.S. at 417, 420.[44] Since the condition that offends

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assumption that some degree of racial mixture is necessary for "success".

[43] It is also undisputed that it was the *state's* deliberate action that caused intentional segregation in the clubs and thus constituted "state action" governed by the Fourteenth Amendment. See *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).

[44] Both *Milliken* cases, like other cases cited above, concerned limitations on the remedial discretion of federal courts in segrega-

the Constitution is a race-conscious admissions policy, not the absence of racial balance, the prior constitutional violation with respect to admissions is fully cured by establishing a system of admissions that "exclude[s] no [person] of a racial minority, directly or indirectly, on account of race." *Swann*, 402 U.S. at 23.[45] Accordingly, a unitary system of admissions is one "within which no person is to be effectively excluded from any [club] because of race or color." *Alexander* v. *Holmes*, 396 U.S. 19, 20 (1969). Accord, *Green* v. *School Board*, 391 U.S. 430, 432 (1968), quoting *Brown II*, 349 U.S. at 300-301 (formerly segregated school systems must " 'achieve a system of determining admission to the public schools on a nonracial basis.' "); *Brown II*, 349 U.S. at 300 ("At stake is the personal interest of the plaintiffs

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tion cases, and not what a state actor such as respondent must do in order to cure prior segregation. These cases, nevertheless, established the outermost bounds of desegregation remedial efforts because they involved the question of whether a district court has exceeded its authority by fashioning a remedy which goes beyond the "nature and extent of the * * * violation." *Milliken I*, 418 U.S. at 744. In defining the limitations on judicial remedial authority, however, these cases do not establish that every defendant must take every step a court could possibly order to cure past discrimination. For example, a district court would be authorized to require intensive affirmative recruitment efforts to cure prior discrimination. However, a state defendant that has not performed such recruitment in all particulars will nevertheless have complied with the Constitution if it arrives at the same end: nondiscriminatory admissions. (See note 41, *supra*.)

[45] Of course, a system does not become unitary in all respects simply by curing its prior discriminatory *admissions*. Rather, it must remedy all aspects of the system that have been affected by such discrimination. In the public school context this would include faculty, facilities, and the other so-called "*Green* factors." See *Green* v. *School Board*, 391 U.S. 430, 435 (1968). Our discussion is expressed in terms of admissions only because we do not understand the private petitioners to contend that the Service has not fulfilled its affirmative duty with respect to the formation of clubs or any other aspect of the clubs' programs.

in admission to public schools * * * on a nondiscriminatory basis").

To be sure, in the elementary and secondary school context, achievement of the truly race-neutral admissions scheme necessary to remedy prior segregation requires more than discontinuance of discrimination if the former unconstitutional practices have created a race-based assignment system that remains in place. Simply ending de jure segregation and returning to a neighborhood school system often will not restore the condition that would have existed absent prior segregation, and thus will not effectievly dismantle the dual system. In such school systems, student attendance districts often have been racially gerrymandered, schools may have been purposely constructed in a particular area to achieve artificial racial separation, and the location of segregated schools may well have significantly contributed to segregated residential patterns. *Swann*, 402 U.S. at 25, 28. In these circumstances, assigning students to their neighborhood school does not place students—either those who attended school during the period of de jure segregation or those who will subsequently enter the system—in the desegregated school environment (or actual school) that they would have experienced absent such prior unconstitutional actions. Accordingly, "[w]hen school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments." *Id.* at 28. To do otherwise would perpetuate the prior de jure segregation by leaving intact conditions that are directly attributable to the unconstitutional actions of state actors.

Where the state has not *assigned* persons during or after the de jure period, however, the process of disestablishing the dual system through achievement of a neutral admissions policy can be more directly accomplished. Where public officials do not assign persons to

a particular program, there is no state-controlled attendance pattern, discriminatory or otherwise, to undo or redraw. Thus, unlike elementary and secondary education, affirmative action to assure a genuine and complete termination of all discrimination in activities affecting admissions will not leave in place any discriminatory conditions caused by previous state-imposed segregation. Such a genuinely race-neutral policy will, absent any subsequent conduct that contributes to segregation, fully dismantle the dual admission system because it will restore to the victims of discriminatory conduct (and provide to others) the system mandated by the Constitution, *i.e.*, one in which each person has an equal opportunity to participate in government activities free from discrimination and racial separation attributable to state action.

This is not to say that a voluntary attendance system is unitary with respect to admissions because the state entity simply announces that it will henceforth conduct admissions without regard to race. Rather, such a formerly segregation government program is unitary only if the state has, in fact, established an admissions "system in which racial discrimination [is] eliminated root and branch." *Green*, 391 U.S. at 438. Thus, the relevant program must be free from all practices that either indicate that the program is not genuinely open to all free from subtle discrimination or that otherwise create further racial separation.

This transition will normally involve diligent oversight and remedial efforts to ensure that the defendant's existing administrative and admissions practices are not tainted by discrimination, and do not send a subtle discriminatory message, that its personnel are sensitized to the need to treat applicants and potential applicants in a wholly nondiscrimiatory manner, that its present and future practices do not have the effect of impeding desegregation, and that it is made clear to all that any prac-

tices discouraging or diminishing racial mixing are truly a thing of the past. Such affirmative action by the state will ensure that a genuinely race-neutral admissions policy has been achieved, and that any subsequent racial imbalance is thus not due to actions attributable to public officials, but to the truly free exercise of choice by private actors unaffected by subtle discriminatory exclusion.[46] Against the backdrop of recent blatant discrimination, affirmative recruitment activities in the media or otherwise will normally be an important component in this nondiscrimination effort, but the ultimate question in every case is whether the state's policies and practices are conducted in a manner that does not exclude or segregate any person on the basis of race.

In this case, as noted, the lower courts found that the respondents had fully cleansed the clubs of any such racially-based activities and that racial imbalance is solely the product of unfettered private action (see note 40, *supra*). Private petitioners do not maintain that these concurrent findings of fact are erroneous or that the respondents engaged in any action that had a segregative effect. Accordingly, for the reasons stated above, we believe the lower courts' determination that such racial discrimination had been eliminated from the sys-

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[46] The 4-H and extension homemaker clubs are not actually a part of the Extension Service, so the precise form of respondents' affirmative remedial duty is somewhat different, although no less compelling, than a state actor that must cure its own internal practices. With respect to admissions, the respondents are obliged to take affirmative action to ensure nondiscrimination against club members by the private voluntary leaders of those clubs. For example, with respect to the sole instance of discrimination by a voluntary worker in the record, the Service promptly removed the worker and admitted the black child to the 4-H Club (Pet. App. 167a n.51). Of course, the Service must also ensure that its own actions related to these clubs—formation of clubs, recruitment of leaders, provision of services—are nondiscriminatory and are not used as devices to perpetuate segregation.

tem "root and branch" establishes that respondents had fully performed their duty to redress prior segregation.

The Service was not required to attain a particular racial mix in its system, regardless of whether private actors continued to retain the freedom to choose which, if any, club to attend. De facto segregation that is purely the product of private decision making, and thus not attributable to any action by the state, is not proscribed by the Constitution. *Dayton I*, 433 U.S. at 413. That being so, such racial imbalance need not be eliminated in order to render an admissions system fully desegregated if the government entity has established a genuinely race-neutral admissions pattern.

This Court's decision in *Spangler* makes this clear. There the district court's adoption of a student assignment plan to remedy public school segregation "established a racially neutral system of student assignment in the [school district]." 427 U.S. at 434. After the first year of this plan's implementation, free movement of persons within the district "resulted in some changes in the demographics of [the district's] residential patterns, with resultant shifts in the racial makeup of some of the schools." *Id.* at 436. "[A]s these shifts were not attributed to any segregative actions on the part of the [school district]" (*ibid.*), the racial imbalance caused by these voluntary choices of private citizens did not mean that the district had failed to perform its duty to remedy prior segregated student assignments. Consequently, the district court's requirement that the defendants engage in additional remedial admissions practices was impermissible because it enforced a right not secured by the Constitution, *i.e.*, the "'substantive * * * right [to a] particular degree of racial balance or mixing.'" *Id.* at 434, quoting *Swann*, 402 U.S. at 24. "For having once implemented a racially-neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, the District Court had fully performed

its function of providing the appropriate remedy for previously racially discriminatory attendance patterns." 427 U.S. at 437.

Thus, just as the *Spangler* school board's adherence to the district court's racially neutral student assignment plan fully redressed previously segregated admissions notwithstanding a racial imbalance due to the voluntary decisions of private individuals, so too does the respondents' establishment of a nondiscriminatory system here fully remedy the prior constitutional violation regardless of whether private activities beyond their control result in an absence of racial mixing. To conclude otherwise would be to equate racial balance with effective desegregation; an equation that, as noted, *Swann* and *Spangler* expressly rejected.

This principle obtains with equal force in situations where private choice, rather than official compulsion, is the means by which attendance is determined. The holding and analysis in *Green* and its companion cases (*Raney* v. *Bd. of Educ.*, 391 U.S. 443 (1968); *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968)) is limited to compulsory public education or other contexts where the government, rather than the participant, traditionally makes the decision concerning where participants in the government program will attend. Thus, *Green's* rejection of "freedom of choice" student assignment plans simply reflects the familiar rule that a system which has not yet achieved unitary status may not take steps that foster segregation where there exists a reasonably available alternative that equally or better serves the governmental purpose purportedly being furthered. And, while the "freedom of choice" plan at issue in *Green* was plainly such a segregation-inducing device, the same is not true where, as here, such private choice is the norm.

In public elementary and secondary schools, the decision whether to attend and which school to attend is virtually always made by the school district, not by the

student. Accordingly, adoption of a "free choice" or "free transfer" plan which is used or operates to perpetuate the separation of the races is impermissible, at least absent persuasive justification. Utilization of such an unusual and administratively awkward admissions scheme in preference to the traditional, more efficient mandatory assignment system creates the inference that, at a minimum, the defendant school district is not striving in good faith to establish a student attendance system that is truly free from racial considerations. In such circumstances, then, it is the school officials' abdication of their normal responsibility to assign students that causes or at least fosters segregation. Such segregation is thus directly attributable to the state, not to private actors. In short, a non-unitary school district's adoption of a "freedom of choice" plan that predictably, if not designedly, results in greater segregation than the traditional and reasonably available mandatory assignment alternative violates the district's affirmative responsibility to refrain from adopting policies that "serve to perpetuate or reestablish the dual school system" (*Columbus Bd. of Educ.* v. *Penick*, 443 U.S. at 460) in preference to less segregative and equally legitimate policies. See *Swann*, 402 U.S. at 20-21; *Columbus*, 443 U.S. at 460-462. In our view, it was precisely for this reason that the "free choice" and "free transfer" plans were struck down in *Green* and *Monroe*.

Noting that normal geographic zoning assignment was a "reasonably available" option that would greatly increase integration, the *Green* court held that a school board's preference for an attendance scheme such as "freedom of choice" "may indicate a lack of good faith; and at the least it places a heavy burden upon the Board to explain its preference for an apparently less effective method." 391 U.S. at 439. Since the use of a "free choice" plan in these circumstances clearly served no legitimate purpose particularly given the procedural and historical context in which the plan was adopted (*id.* at

432-433, 440 n.5), the school board in *Green* was unable to meet this burden. Indeed, " 'it is evident that here the Board, by separately busing Negro children across the entire county to the 'Negro' school, and the white children to the 'white' school, is deliberately maintaining a segregated system which would vanish with non-racial geographic zoning.' " 391 U.S. at 442 n.6, quoting *Bowman* v. *County School Board*, 382 F.2d 326, 332 (4th Cir. 1967) (concurring opinion).

In *Monroe*, this Court was even more explicit. In that case, the "free transfer" option allowing students to transfer after initial geographic assignment, "permitted the 'considerable number of white or Negro students in at least two of the zones to return, at the implicit invitation of the Board, to the comfortable security of the old, established discriminatory pattern * * * no attempt has been made to justify the transfer provision as a device designed to meet 'legitimate local problems'; rather, it patently operates as a device to allow *resegregation* of the races to the extent desegregation would be achieved by geographically drawn zones." 391 U.S. at 459, quoting *Goss* v. *Bd. of Educ.*, 373 U.S. 683, 689 (1983) (emphasis in original).

No such constitutional infirmity attaches to the continuance of free choice in those situations where such choice is a traditional aspect of the government program or activity. In contexts such as public parks, higher education and the 4-H Clubs here, participation or attendance in the state activity is wholly voluntary in all respects. Unlike public schools, free choice as to whether and where to attend is a normal and important feature of the system—not, as in the public elementary and secondary school context, a newly discovered device that will clearly have a segregative effect. In such cases, a transition to officially compelled assignments would constitute a fundamental alteration of the system. It would increase government regulation of private conduct by denying indi-

viduals the liberty to attend, for example, the park that is most convenient or the university best suited to their educational needs. Accordingly, preservation of the participants' traditional "free choice" cannot reasonably be viewed as an act of bad faith or a device that encourages or perpetuates segregation. To the contrary it "serve[s] important and legitimate ends." *Dayton Bd. of Educ.* v. *Brinkman* (*Dayton II*), 443 U.S. 526, 538 (1979).

Unlike the public schools in *Green* and *Monroe*, therefore, any lingering racial imbalance in the 4-H and extension homemaker clubs here is not attributable to unjustified segregation action by the government respondents, but solely to decisions freely made by private actors. That being so, neither *Green* nor *Monroe* suggests that the state has an affirmative duty in such circumstances to eliminate or restrict the discretion of private actors to achieve a greater racial balance. Nor has this Court ever suggested such a rule in any other context.[47] Indeed, in the same term that *Green* and *Monroe* were decided, this Court summarily affirmed, over dissent, a three-judge court's decision that those cases' condemnation of "freedom of choice" plans was inapposite in the higher education context because admissions there are traditionally governed by private choice. *Alabama State Teachers' Ass'n.* v. *Alabama Public School & College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), aff'd, 393 U.S. 400 (1969).[48]

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[47] For example, this Court issued a series of per curiam decisions following *Brown* which invalidated segregation in various state activities without any suggestion that the revelant public officials must do more than henceforth insure a nondiscriminatory admissions policy, *i.e.*, provide free choice. See *Muir* v. *Louisville Park Theatrical Ass'n*, 347 U.S. 971 (1954) (parks); *Mayor of Baltimore* v. *Dawson*, 350 U.S. 877 (1955) (beaches and bathhouses); *Holmes* v. *City of Atlanta*, 350 U.S. 879 (1955) (golf courses); *Gayle* v. *Browder*, 352 U.S. 903 (1956) (public transportation).

[48] Of course, a higher education system must take affirmative remedial action not only with respect to admissions, but also, for

Thus, *Green* did not hold that the continuation of free choice is an inherent defect in a racially imbalanced system, but only that the adoption of such a scheme in the public school context is impermissible if it impedes or frustrates desegregation. Any contrary interpretation of *Green* "can be supported only by drastic expansion of the constitutional right itself, an expansion without any support in either constitutional principle or precedent." *Milliken I*, 418 U.S. at 747. Such an understanding of *Green* would not only read into it a requirement for "mandatory integration" which that opinion expressly rejected (391 U.S. at 437), but also would bring that decision squarely into conflict with this Court's established precedent that no particular degree of racial mixing is constitutionally required. See page 10, *supra*.

Of course, the Service undoubtedly *could* have sought to increase integration by attempting to close one-race clubs, by denying club members the opportunity to join the club of their choice or by discriminatorily excluding black and white children from clubs where their race predominates through preferential "other-race" goals and quotas. We fail to perceive, however, why such actions are in any way necessary to vindicate the constitutional rights of those persons whose unfettered access to government-supported programs is being so restricted. Where a state has unlawfully segregated railroad cars, for example, the state is not constitutionally required to compel blacks to sit in the previously all-white railroad car or to restrict access to the car formerly reserved for blacks. By the same token, so long as the Service ensured equal access to the clubs and did not engage in practices that impeded desegregation, it was not required to restrict persons' normal discretion to join the club of their choice, even if those persons exercised their unfettered choice to join a club in which their race predominates.

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example, faculty, facilities, and lingering funding disparities before it will become unitary in all respects.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed in part, affirmed in part, and remanded.

Respectfully submitted.

CHARLES FRIED
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

CAROLYN B. KUHL
Deputy Solicitor General

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Attorneys

JANUARY 1986

Affidavit of Foster L. Campbell, Jr.

Member, Louisiana State Senate

Foster L. Campbell, being duly sworn, deposes and says:

1. I am a Senator of the State of Louisiana, serving since 1976, with much of my service as a member of The Senate Education Committee. This affidavit is submitted in support of Southern University Board of Supervisors' motion to stay the enforcement of the judgment entered heretofore pending the hearing of the Board's motion for anew trial and/or to alter or Amend Judgment, and the Board's alternate motion for a stay pending the hearing and determination of the Board's appeal to the United States Supreme Court or to such other court as may be appropriate.

2. The Louisiana State Senate, in its regular session, passed a resolution, which I authored, urging the Three-Judge Court in the referenced matter to permit the State Senate to appoint the membership of any single governance board the court had indicated that it might order. Twenty-one members of the Senate joined me as co-authors of the resolution and the vote on its final passage was 25 to 12, with two Senators absent. The Senate is made up of 39 members. The Resolution is attached as Exhibit F-1.

3. I authored the resolution because I feel that the system of selection of the members of a single board of higher education governance and management is a critically important matter because of the board's singularity. I believe, and almost two-thirds of the State's Senators agree, that to establish such a board solely by gubernatorial appointment is to risk disaster. The potential for undue influence, if not outright control of the entire system of public education by one man, has to be ameliorated by substituting for it an appointing authority with more diffuse power.

4. In the 1988 Regular Session of the Louisiana Legislature, I voted for a single governance board, but the measure was defeated by the Senate. While the establishment of a single governance board may well be beneficial, the method by which the board is appointed assuming that racial, geographic, and gender representation is required, is not a factor relative to the goal of desegregation. This is an educational policy matter to be decided by the Louisiana State Legislature. Not only is the goal of desegregation unaddressed by exclusive gubernatorial appointment, the potential for damage in the concentration of power over higher education in a single person is enormous. The action of the Senate in defeating the single board legislation in 1988 is attached hereto as Exhibit F-2.

5. I feel the strongest asset the Democracy has is that the power is vested in the people, not one individual. If the court's Order is implemented, the will of the people of Louisiana, as expressed through its Constitution and through the referenced resolution, would be thwarted. Material relating to the action in the people of Louisiana in adopting the State's constitutional governance board system is attached hereto as Exhibit F-3, (a), (b), (c), and (d).

6. A stay is necessary to preserve the status quo pending rehearing on appeal.

FOSTER L. CAMPBELL, JR.

Notary Public

NAYS

Messrs.—

Mr. President	McLeod
Doland	Nelson
Ewing	Poston
Hainkel	Swearingen
Kelly	

Total—9

ABSENT

Messrs.—

Bagert	Hinton
Chabert	Lauricella
Cross	

Total—5

The Chair declared that the rules were suspended.

Introduction of Resolutions,
Senate and Concurrent

Mr. Campbell asked for and obtained a suspension of the rules for the purpose of introducing and reading the following Resolutions, Senate and Concurrent, a first and second time and acting upon them as follows:

SENATE RESOLUTION No. 8—

By Mr. Fields:

A RESOLUTION

To urge and request the Committee on Senate and Governmental Affairs to study and report on Senate staff structure, personnel policies, pay plans, employment, compensation, promotion, employee functions and duties, employee grievances, and staff assignments and

the feasibility of establishing a Senate personnel committee.

Motion

Mr. Fields moved to suspend the rules for the purpose of considering the resolution at this time.

Mr. Picard objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Bagneris
Brinkhaus
Campbell
Crain
Fields
Jefferson
Johnson
Jumonville
Landry
McLeod
McPherson
Nunez
Saunders
Sevario
Tarver
Thompson

Total—16

NAYS

Messrs.—

Mr. President
Bagert
Bankston
Decuir
Doland
Ewing
Hainkel
Hollis
Kelly
Nelson
Osterberger
Picard
Poston
Rayburn
Swearingen
Ullo
Windhorst

Total—17

ABSENT

Messrs.—

Chabert	Hinton
Cross	Lauricella
Foster	Neeson

Total—6

The Chair declared that the Senate refused to suspend the rules.

On motion of Mr. Fields, the resolution was read by title and referred to the Committee on Senate and Governmental Affairs.

SENATE RESOLUTION No. 9—

By Messrs. Campbell, McPherson, Crain, Thompson, Saunders, Picard, Brinkhaus, Decuir, Sevario, Jefferson, Tarver, Foster, Nunez, Cross, Neeson, Bagneris, Fields, Poston, Osterberger, Landry and Ullo:

A RESOLUTION

To urge and request the United States District Court of the Eastern District of Louisiana, in the event it order a single governance board, to comprise by legislative selection the membership of any single board of higher education governance in any order issued by the court in settlement, by consent or judgment, of the case of the United States v. Louisiana, Civil Action No. 80-3300, and to require the membership to be racially balanced.

Motion

Mr. Campbell moved to suspend the rules for the purpose of considering the resolution at this time.

Mr. McLeod objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Bagneris	Landry
Brinkhaus	McPherson
Campbell	Neeson
Crain	Nunez
Cross	Osterberger
Decuir	Picard
Fields	Saunders
Foster	Sevario
Hollis	Tarver
Jefferson	Thompson
Johnson	Ullo

Total—22

NAYS

Messrs.—

Mr. President	Kelly
Bagert	McLeod
Bankston	Nelson
Doland	Poston
Ewing	Rayburn
Hainkel	Swearingen
Jumonville	Windhorst

Total—14

ABSENT

Messrs.—

Chabert	Lauricella
Hinton	

Total—3

The Chair declared that the rules were suspended.

Floor Amendments Sent Up

Mr. Brinkhaus sent up floor amendments which were read.

The resolution was read by title.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Brinkhaus to original Senate Resolution No. 9 by Mr. Campbell.

AMENDMENT No. 1—

On page 1, line 18, change "order" to "orders"

AMENDMENT No. 2—

On page 1, line 18, after "to" delete the remainder of the line and on line 19 delete "legislative selection" and insert "to provide for legislative appointment of"

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AMENDMENT No. 3—

On page 2, line 13, after "to" delete "comprise" and on line 19 delete "by legislative selection" and insert "to provide for legislative appointment

On motion of Mr. Brinkhaus, the amendments were adopted.

Floor Amendments Sent Up

Mr. Rayburn sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Rayburn to original Senate Resolution No. 9 by Mr. Campbell.

AMENDMENT No. 1—

On page 1, line 17 after "To" delete "urge and request" and insert "direct"

AMENDMENT No. 2—

On page 2, line 12 after "Louisiana" delete "urges and request" and insert "directs"

Mr. Rayburn moved the adoption of the amendments. Mr. Campbell objected.

ROLL CALL

The roll was called with the following result:

YEAS

On motion of Mr. Rayburn, the amendment was withdrawn.

Under a suspension of the rules Mr. Campbell moved the adoption of the amended resolution.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Bagert
Bagneris
Brinkhaus
Campbell
Crain
Cross
Decuir
Doland
Fields
Foster
Jefferson
Johnson
Jumonville
Landry
McPherson
Neeson
Nunez
Osterberger
Picard
Poston
Saunders
Sevario
Tarver
Thompson
Ullo

Total—25

NAYS

Messrs.—

Mr. President
Bankston
illegible
Lauricella
McLeod
Nelson

Hainkel	Rayburn
Hollis	Swearingen
Kelly	Windhorst

Total—12

ABSENT

Messrs.—

Bagert	Hinton

Total—2

The Chair declared the Senate had adopted the amended Senate Resolution.

Floor Amendment Sent Up

Mr. Kelly sent up a floor amendment which was read.

SENATE FLOOR AMENDMENT

Amendment proposed by Mr. Kelly to original Senate Resolution No. 9 by Mr. Campbell.

AMENDMENT No. 1—

On page 1, between lines 22 and 23 insert the following:

"Whereas the Senate is in support of the creation of single board for the governance of higher education; and

Mr. Kelly moved the adoption of the amendment.

Mr. Campbell objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President
Bankston
Ewing
Hainkel
Hollis
Kelly
Lauricella
Nelson
Swearingen
Windhorst

Total—10

NAYS

Messrs.—

Bagert
Bagneris
Brinkhaus
Campbell
Crain
Cross
Decuir
Doland
Fields
Foster
Jefferson
Johnson
Jumonville
Landry
McPherson
Neeson
Nunez
Osterberger
Picard
Poston
Rayburn
Sevario
Tarver
Thompson
Ullo

Total—25

ABSENT

Messrs.—

Chabert
Hinton
McLeod
Saunders

Total—4

The Chair declared the amendment was rejected.

Floor Amendment Sent Up

Mr. Kelly sent up a floor amendment which was read.

SENATE FLOOR AMENDMENT

Amendment proposed by Mr. Kelly to original Senate Resolution No. 9 by Mr. Campbell.

AMENDMENT No. 1—

On page 2, between lines 19 and 20 insert the following:

"Be if further resolved that the entire record of the Senate relative to the passage of this resolution be sent to the court in addition to the copy of the resolution."

Mr. Kelly moved the adoption of the amendment.

Mr. Campbell objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President	Kelly
Bankston	Lauricella
Ewing	Nelson
Hainkel	Swearingen
Hollis	Windhorst

Total—10

NAYS

Messrs.—

Bagert	Cross
Bagneris	Decuir
Brinkhaus	Doland
Campbell	Fields
Crain	Foster

Jefferson	Picard
Johnson	Poston
Jumonville	Rayburn
Landry	Saunders
McPherson	Sevario
Neeson	Tarver
Nunez	Thompson
Osterberger	Ullo

Total—26

ABSENT

Messrs.—

Chabert	McLeod
Hinton	

Total—3

The Chair declared the amendment was rejected.

SENATE CONCURRENT RESOLUTION No. 96—

By Mr. Hainkel:

A CONCURRENT RESOLUTION

To commend the 1989 Louisiana State University baseball team and Coach Skip Bertman and his staff on winning the Central Regional championship and advancing to the 1989 College World Series.

The resolution was read by title. Under a suspension of the rules Mr. Hainkel moved the adoption of the resolution.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President	Bagneris
Bagert	Bankston

Brinkhaus	McLeod
Campbell	McPherson
Crain	Neeson
Cross	Nelson
Decuir	Nunez
Doland	Osterberger
Ewing	Picard
Fields	Poston
Foster	Rayburn
Hainkel	Saunders
Hollis	Sevario
Jefferson	Swearingen
Johnson	Tarver
Jumonville	Thompson
Kelly	Ullo
Landry	Windhorst
Lauricella	

Total—37

NAYS

Total—0

ABSENT

Messrs.—

Chabert	Hinton

Total—2

The Chair declared the Senate had adopted the Senate Concurrent Resolution and ordered it sent to the House.

Regular Order of the Day, Resumed

Senate Bills and Joint Resolutions
on Third Reading
and Final Passage, Resumed

The following Senate Bills and Joint Resolutions on third reading and final passage were taken up and acted upon as follows:

SENATE BILL No. 238—

By Mr. Bankston:

AN ACT

To amend and reenact R.S. 18:59(I), 61, 62(A), 103(A), 109 and 133(E), and to enact R.S. 18:58(E), 59.4, 61.1, and 61.2, relative to volunteer deputy registrars; to provide for their appointment, course of instruction, qualifications, and duties; and to provide for related matters.

Floor Amendments Sent Up

Mr. Nelson sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Nelson on behalf of the Legislative Bureau to engrossed Senate Bill No. 238 by Mr. Bankston.

AMENDMENT No. 1—

On page 1, line 34, after "course" delete the comma "," and insert "and"

AMENDMENT No. 2—

On page 5, line 26, after "If" delete "the latter" and insert the following: "the appointment is revoked"

AMENDMENT No. 3—

On page 5, line 30, after "decide" insert a comma ","

AMENDMENT No. 4—

On page 6, line 10, after "registrars" insert a comma ","

AMENDMENT No. 5—

On page 6, line 13, after "registrars" delete the comma ","

AMENDMENT No. 6—

On page 7, at the beginning of line, 4, delete "registrar or deputy registrar" and insert "registrar, deputy registrar,"

AMENDMENT No. 7—

On page 7, line 5, after "register" delete the comma ","

AMENDMENT No. 8—

On page 7, line 16, before "person's" insert "the"

AMENDMENT No. 9—

On page 6, line 24, delete "and" after "voters,"

On motion of Mr. Nelson, the amendments were adopted.

Floor Amendments Sent Up

Mr. Bankston sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Bankston to engrossed Senate Bill No. 238 by messrs. Bankston, et al.

AMENDMENT No. 1—

On page 7, line 25, after "sender" and before the quote " " " insert "; address correction requested"

SENATE BILL No. 45—

By Mr. Kelly:

A JOINT RESOLUTION

Proposing to amend Article VIII, Sections 3(A), 5, 8, and 12, to add Article VIII, Section 16, and to repeal Article VIII, Sections 6 and 7, relative to public higher and vocational-technical education; to create a Board

of Governors to govern, manage, and have budgetary responsibility for all public institutions of higher education; to provide relative to the membership, terms, and qualifications of the members of such board; to provide for their powers and duties; to transfer responsibility for vocational-technical schools from the State Board of Elementary and Secondary Education to the Board of Governors; to provide relative to appropriations for higher education; to eliminate the Board of Regents and all other boards vested with management responsibilities for higher education systems; to provide for the transfer of certain powers, property, and obligations; to specify an election date for submission of the proposition to electors and provide a ballot proposition; and to provide for related matters.

Floor Amendments Sent Up

Mr. Bares sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Messrs. Bares, Picard and Doland to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

On page 1, line 27, after "obligations;" insert "to provide for the transition and initial appointments;"

AMENDMENT No. 2—

On page 2, delete lines 9 through 29 and insert in lieu thereof the following:

"(B) Membership; Terms; Qualifications. (1) The board shall consist of twenty-two electors. Twenty-one members shall be appointed by the governor, subject to Senate confirmation, for overlapping terms of six years, following initial terms which shall be established by the governor. A student member shall be selected in the manner provided by law.

(2) Of the twenty-one members appointed by the governor, two shall be appointed from each congressional district and one shall be appointed from each Public Service Commission district. No member shall be appointed as representative of more than one district. The membership of the board shall reflect substantially the racial and minority characteristics of the population of the state.

(3) All hearings and actions by the Senate relative to Senate confirmation of persons appointed pursuant to this Section shall be conducted publicly.

(4) No member shall be re-appointed more than once. No member shall serve more than twelve years.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment."

AMENDMENT No. 3—

On page 3, between lines 31 and 32, insert the following:

"(3) To study the need for and feasibility of any new institution of post-secondary education, including branches of institutions and conversion of two-year institutions to institutions offering longer courses of study. If the creation of a new institution or the conversion of a two-year institution is proposed, the Board of Governors shall report its written findings and recommendations to the legislature within one year. Only after the report has been filed, or, after one year if no report is filed, may the legislature take affirmative action on such a proposal and then only by law enacted by two-thirds of the elected members of each house.

(4) To require that every higher education institution submit to the president of the system, at a time the Board of Governors specifies, an annual budget proposal

for its operational needs. The president shall prepare a comprehensive budget for operations and for capital construction and improvements and submit the budget of each institution, the comprehensive budget, and his budget recommendations for all institutions if higher education in the state. He shall recommend priorities for capital construction and improvements.

(5) To delegate such of its duties and powers to such officers and employees of the board and under such terms and conditions as the board determines best serves the interests of higher education.

(6) To create and provide for, within its discretion, such advisory boards as it determines is in the best interests of higher education."

AMENDMENT No. 4—

On page 4, line 16, after "Universities" change "," to "and" and after "Colleges" delete ", and Vocational-technical Schools"

AMENDMENT No. 5—

On page 4, line 18, change "The" to "In defining the role, scope, and mission for each institution, the"

AMENDMENT No. 6—

On page 4, line 20, after "University" change the dash to a period

AMENDMENT No. 7—

On page 4, line 21, after "shall be" insert "maintained as"

AMENDMENT No. 8—

On page 4, line 22, after "Louisiana" delete "and" and insert a period and on line 23, delete "shall be maintained as such."

AMENDMENT No. 9—

On page 4, delete lines 28 through 35 and on page 5, delete lines 1 through 4 and insert in lieu thereof the following:

"(B) Doctoral Granting Universities. These universities shall offer graduate programs, including doctoral degrees in areas of concentration and specialization. A broad spectrum of baccalaureate degrees shall be offered at these institutions.

(C) Comprehensive Universities. These universities shall offer graduate programs limited to the masters and specialist degree programs in their areas of specialization. A broad spectrum of baccalaureate degrees shall be offered at these institutions."

AMENDMENT No. 10—

On page 5, line 5, delete "and Vocational-Technical Training Schools" and change the dash to a period

AMENDMENT No. 11—

On page 5, delete line 6 and insert "These institutions shall have open admissions and concentrate on associate degree"

AMENDMENT No. 12—

On page 5, line 7, after "programs" change the comma to "and" and after "courses" delete ", or vocational-technical training"

AMENDMENT No. 13—

On page 5, delete lines 16 through 18

AMENDMENT No. 14—

On page 5, line 30, after "Successor" insert "; Transition; Initial Appointments"

AMENDMENT No. 15—

On page 5, line 32, after "16," insert "(A)"

AMENDMENT No. 16—

On page 6, between lines 6 and 7 insert the following:

"(B) Notwithstanding the provisions of Section 5(B) of this Article, the initial appointments to the Board of Governors shall be made as follows:

(1) Three members shall be elected from among the members of the Board of Regents existing prior to January 1, 1989 by the Senate Committee on Education and the House Committee on Education, acting jointly, upon

a favorable vote of a majority of the members thereof from each house present and voting. One such elected member shall be designated to serve a two-year term, one a four-year term, and one a six-year term. Each such member shall represent a different congressional district.

(2) Three members shall be elected from among the members of the Board of Trustees of State Colleges and Universities existing prior to January 1, 1989 by the Senate Committee on Education and the House Committee on Education, acting jointly, upon a favorable vote of a majority of the members thereof from each house present and voting. One such elected member shall be designated to serve a two-year term, one a four-year term, and one a six-year term. Each such member shall represent a different congressional district.

(3) Three members shall be elected from among the members of the Board of Supervisors of the Louisian State University and Agricultural and Mechanical College existing prior to January 1, 1989 by the Senate

Committee on Education and the House Committee on Education, acting jointly, upon a favorable vote of a majority of the members thereof from each house present and voting. One such elected member shall be designated to serve a two-year term, one a four-year term, and one a six-year term. Each such member shall represent a different congressional district.

(4) Three members shall be elected from among the members of the Board of Supervisors of the Southern University and Agricultural and Mechanical College existing prior to January 1, 1989 by the Senate Committee on Education and the House Committee on Education, acting jointly, upon a favorable vote of a majority of the members thereof from each house present and voting. One such elected member shall be designated to serve a two-year term, one a four-year term, and one a six-year term. Each such member shall represent a different congressional district.

(5) The governor shall assist the committee in order to assure that no more than two members of the Board of Governors selected in the manner provided in this Paragraph shall represent one congressional district. Following the elections by the education committees, the governor shall appoint, subject to Senate confirmation, nine members to the Board of Governors. Such appointments shall be made in a manner which results in the twenty-one initial members being representative of districts in the manner provided in Section 5 of this constitution. The governor shall designate three of his initial appointees to serve two-year terms, three to serve four-year terms, and three to serve six-year terms.

(6) Vacancies on the Board of Governors after the initial selections are made as provided in this Section shall be filled in conformance with the provisions of Section 5 of this constitution."

AMENDMENT No. 17—

On page 6, line 17, change "twenty-four" to "twenty-two"

AMENDMENT No. 18—

On page 6, line 19, after "universities;" delete the remainder of the line and delete lines 20 through 25 and insert in lieu thereof the following:

"to provide that of the twenty-one members appointed by the governor, two shall be appointed from each congressional district and one shall be appointed from each Public Service Commission district to serve overlapping six-year terms; to provide for the selection of the initial members of the board; to provide for the selection of a student member to"

Mr. Bares moved the adoption of the amendments.

Mr. Campbell objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President
Bagert
Bagneris
Bankston
Crain
Decuir
Doland
Ewing
Foster
Hollis
Kelly
Lauricella
McLeod
Neeson
Nelson
Osterberger
Picard
Poston
Rayburn
Swearingen
Thompson
Windhorst

Total—22

NAYS

Messrs.—

Brinkhaus	Jumonville
Campbell	Landry
Chabert	McPherson
Cross	Nunez
Fields	Saunders
Hinton	Sevario
Jefferson	Tarver
Johnson	

Total—15

ABSENT

Messrs.—

Hainkel	Ullo

Total—2

The Chair declared the amendments were adopted.

Floor Amendments Sent Up

Mr. Bares sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Bares to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

On page 5, line 23, after "be" insert "used as provided by law and shall be"

AMENDMENT No. 2—

On page 5, line 28, after "funds" insert "in the manner provided by law"

On motion of Mr. Bares, the amendments were adopted.

Floor Amendment Sent Up

Mr. Brinkhaus sent up a floor amendment which was read.

SENATE FLOOR AMENDMENT

Amendment proposed by Mr. Brinkhaus to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

On page 4, line 26, after "law" insert "and agriculture, including"

On motion of Mr. Brinkhaus, the amendment was adopted.

Floor Amendment Sent Up

Mr. Rayburn sent up a floor amendment which was read.

SENATE FLOOR AMENDMENT

Amendment proposed by Mr. Rayburn to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

On page 6, between lines 6 and 7 and after Senate Floor Amendment No. 16 proposed by Mr. Bares and adopted by the Senate on June 15, 1988 add the following:

"(C) All initial appointments made to the Board of Governors, including those appointments made by the Senate Committee on Education and House Committee on Education, shall be submitted to the Senate for confirmation."

On motion of Mr. Rayburn, the amendment was adopted.

Floor Amendments Sent Up

Mr. Campbell sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Campbell to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

On page 2, delete lines 10 through 14 and insert in lieu thereof "twenty-one electors. Ten members shall be elected by a vote of the people, two from each Public Service Commission district; ten members shall be appointed by the governor from the state at large, subject to Senate confirmation; and one member shall be a student, selected in the manner."

AMENDMENT No. 2—

On page 2, line 15, after "except" insert "the" and change "members" to "member"

AMENDMENT No. 3—

On page 5, line 16, after "law" change "," to "." and delete the remainder of the line and delete lines 17 and 18.

AMENDMENT No. 4—

On page 6, line 17, change "twenty-four" to "twenty-one"

AMENDMENT No. 5—

On page 6, line 19, change "eight" to "ten"

AMENDMENT No. 6—

On page 6, line 20, change "one" to "two" and change "congressional" to "Public Service Commission"

AMENDMENT No. 7—

On page 6, delete line 21 and one 22, delete "congressional district" and change "five" to "ten"

AMENDMENT No. 8—

On page 6, line 23, after "and" delete the remainder of the line and insert "one member be a student,"

AMENDMENT No. 9—

On page 6, line 25, after "except" insert "the" and change "members" to "member"

AMENDMENT No. 10—

Delete Senate Floor Amendments No. 2, 14, 15, 16, and 18 proposed by Senators Bares, Picard and Doland and adopted by the Senate on June 15, 1988

Mr. Campbell moved the adoption of the amendments.

Mr. Bares objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.

Campbell	McPherson
Chabert	Nunez
Cross	Saunders
Jumonville	Sevario

Total—8

NAYS

Messrs.—

Mr. President	Doland
Bagert	Ewing
Bagneris	Fields
Bankston	Foster
Brinkhaus	Hainkel
Crain	Hinton
Decuir	Hollis

Jefferson	Osterberger
Johnson	Poston
Kelly	Rayburn
Landry	Swearingen
Lauricella	Tarver
McLeod	Thompson
Neeson	Ullo
Nelson	Windhorst

Total—30

ABSENT

Mr. Picard

Total—1

The Chair declared the amendments were rejected.

Floor Amendments Sent Up

Mr. Fields sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Fields to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

In Senate Floor Amendment No. 2 proposed by Senators Bares, Picard and Doland and adopted by the Senate on June 15, 1988, on line 2, change "twenty-two" to "twenty-four" and on line 5, change "A" to "The" and on line 5, change "member" to "members"

AMENDMENT No. 2—

Delete Amendment No. 13 proposed by Senators Bares, Picard and Doland and adopted by the Senate on June 15, 1988.

Mr. Fields moved the adoption of the amendments.

Mr. Doland objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Bagneris
Brinkhaus
Campbell
Chabert
Doland
Fields
Jefferson
Johnson
Jumonville
Landry
McPherson
Nunez
Saunders
Sevario
Tarver

Total—15

NAYS

Messrs.—

Mr. President
Bagert
Bankston
Crain
Decuir
Ewing
Foster
Hainkel
Hinton
Hollis
Kelly
Lauricella
McLeod
Neeson
Nelson
Osterberger
Picard
Poston
Rayburn
Swearingen
Thompson
Ullo
Windhorst

Total—23

ABSENT

Mr. Cross

Total—1

The Chair declared the amendments were rejected.

Floor Amendments Sent Up

Mr. Jumonville sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Jumonville to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

In Senate Floor Amendment No. 2 proposed by Senators Bares, Picard and Doland and adopted by the Senate on June 15, on line 13, after "publicly." insert:

"Whether to fill an initial or succeeding full term or the unexpired portion of a term of office, the governor shall submit his appointment to the Senate for confirmation and other than for reason of death, resignation, or removal for cause, any duly appointed member of the Board of Governors shall remain in office until his successor is nominated, appointed, and confirmed by the Senate."

AMENDMENT No. 2—

In Senate Floor Amendment No. 1 proposed by Senator Rayburn and adopted by the Senate on June 15, on line 5, after "confirmation" insert "and such appointees may not begin service on the board until confirmation has occurred"

Mr. Jumonville moved the adoption of the amendments.

Mr. Bares objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Brinkhaus
Campbell
Chabert
Cross
Foster
Jefferson
Johnson
Jumonville
McPherson
Nunez
Sevario
Tarver

Total—12

NAYS

Messrs.—

Mr. President
Bagert
Bagneris
Bankston
Crain
Decuir
Doland
Ewing
Fields
Hainkel
Hinton
Hollis
Kelly
Landry
Lauricella
McLeod
Neeson
Nelson
Osterberger
Picard
Poston
Rayburn
Saunders
Swearingen
Ullo
Windhorst

Total—26

ABSENT

Mr. Thompson

Total—1

The Chair declared the amendments were rejected.

Floor Amendments Sent Up

Mr. Landry sent up floor amendments which were read.

SENATE FLOOR AMENDMENTS

Amendments proposed by Mr. Landry to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

In Senate Floor Amendment No. 2 proposed by Senator Bares, et al. and adopted by the Senate on June 15, 1988, on line 2, change "twenty-two" to "twenty-three" and on line 5 change "A" to "Two" and change "member" to "members"

AMENDMENT No. 2—

Delete Senate Floor Amendment No. 13 proposed by Senator Bares, et al. and adopted by the Senate on June 15, 1988."

AMENDMENT No. 3—

On page 5, line 16, after "law" delete the remainder of the line and delete lines 17 and 18 and insert a period ".".

Mr. Landry moved the adoption of the amendments.

Mr. Doland objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Bagneris	Jumonville
Brinkhaus	Landry
Campbell	McPherson
Chabert	Nunez
Fields	Saunders
Jefferson	Sevario
Johnson	Tarver

Total—14

NAYS

Messrs.—

Mr. President	Bankston
Bagert	Crain

Cross	Neeson
Decuir	Nelson
Doland	Osterberger
Ewing	Picard
Foster	Poston
Hainkel	Rayburn
Hinton	Swearingen
Hollis	Thompson
Kelly	Ullo
Lauricella	Windhorst
McLeod	

Total—25

ABSENT

Total—0

The Chair declared the amendments were rejected.

Floor Amendment Sent Up

Mr. Bares sent up a floor amendment which was read.

SENATE FLOOR AMENDMENT

Amendment proposed by Mr. Bares to engrossed Senate Bill No. 45 by Mr. Kelly.

AMENDMENT No. 1—

In Senate Floor Amendment No. 2 proposed by Senators Bares, Picard, and Doland and adopted by the Senate June 15, 1988, on line 17, after the word "term" delete the remainder of the line and delete line 18 and insert:

"by appointment by the governor, subject to Senate confirmation." "

Mr. Bares moved the adoption of the amendment.

Mr. Fields objected.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President
Bagert
Bankston
Campbell
Chabert
Crain
Cross
Decuir
Doland
Ewing
Foster
Hainkel
Hinton
Hollis
Johnson
Kelly
McLeod
Neeson
Nelson
Osterberger
Picard
Poston
Rayburn
Saunders
Sevario
Swearingen
Thompson
Ullo
Windhorst

Total—29

NAYS

Messrs.—

Bagneris
Brinkhaus
Fields
Jefferson
Jumonville
Landry
McPherson
Nunez
Tarver

Total—9

ABSENT

Mr. Lauricella

Total—1

The Chair declared the amendment was adopted.

The bill was read by title. Mr. Bares moved the final passage of the amended bill.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President
Bagert
Bankston
Campbell
Crain
Decuir
Doland
Ewing
Hainkel
Hinton
Hollis
Kelly
Lauricella
McLeod
Neeson
Nelson
Osterberger
Picard
Poston
Rayburn
Swearingen
Thompson
Ullo
Windhorst

Total—24

NAYS

Messrs.—

Bagneris
Brinkhaus
Chabert
Cross
Fields
Foster
Jefferson
Johnson
Jumonville
Landry
McPherson
Nunez
Saunders
Sevario
Tarver

Total—15

ABSENT

Total—0

The Chair declared the amended bill failed to pass.

Notice of Reconsideration

Mr. Barnes, pursuant to Senate Rule Number 11; 12, gave notice that before the expiration of the Morning Hour of the next succeeding legislative day of the Senate, he would move to reconsider the vote by which the bill failed to pass.

Rules Suspended

Mr. Sevario asked for and obtained a suspension of the rules for the purpose of advancing to the order of House Bills on Third Reading and Final Passage and calling House Bill No. 710 out of its regular order

House Bills and Joint Resolutions
on Third Reading
and Final Passage

The following House Bills and Joint Resolutions on third reading and final passage were taken up and acted upon as follows:

HOUSE BILL No. 710—

By Representatives Diez and Carrier and Senators Sevario and Cross:

AN ACT

To amend and reenact R.S. 33:2740.6(A) and (B)(1), relative to special taxing districts in Livingston Parish; to ratify creation of Special Sales Tax District Number Two and to proivde that the boundaries of said district may overlap other such special taxing districts; to increase the maximum rate of sales and use tax which may be levied within any such district; to provide that the tax rate authorized for any such district plus the rate for any such overlapping district shall not exceed such maximum rate; and to provide for related matters.

The bill was read by title. Mr. Sevarino moved the final passage of the bill.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Mr. President
Bagert
Bagneris
Bankston
Brinkhaus
Campbell
Chabert
Crain
Cross
Decuir
Doland
Ewing
Fields
Foster
Hainkel
Hinton
Hollis
Jefferson
Johnson
Jumonville
Kelly
Landry
Lauricella
McPherson
Neeson
Nelson
Nunez
Osterberger
Picard
Poston
Rayburn
Saunders
Sevario
Swearingen
Tarver
Thompson
Ullo
Windhorst

Total—38

NAYS

Total—0

ABSENT

Mr. McLeod

Total—1

The Chair declared the bill was passed. The title was read and adopted. Mr. Sevario moved to reconsider the vote by which the bill was passed and laid the motion on the table.

Regular Order of the Day, Resumed

Senate Bills and Joint Resolutions
Returned from the House of
Representatives with Amendments

The following Senate Bills and Joint Resolutions returned from the House of Representatives with amendments were taken up and acted upon as follows:

EXHIBIT G

STATEMENT OF JOHNNY JACKSON, JR.

I am Johnny Jackson, Jr. I am currently a member of the New Orleans City Council. Prior to that, I served as a State Representative for the State of Louisiana. In 1973, I was a delegate to the Louisiana Constitutional Convention. As a delegate, I authorized and proposed an amendment that provided for the creation of the Southern University Board of Supervisors and required it to be placed in the State Constitution.

I felt there was a need for Southern University to have its own governing board because of the history of discrimination that the institution had experienced. The amendment had the support of an overwhelming majority of the black delegates at the constitutional convention. It subsequently earned the overwhelming support of the state's black voters for its adoption.

The reason for this board was that the university needed a vehicle of governance to address the peculiar needs of its student population, which needs had not been addressed prior to that time. To do away with the Southern University Board at this time would mean that those peculiar needs would again go unaddressed, that the purality and diversity of opinion in higher education would be lost, and that the voice for equality in advocacy for the various interests that make up our state would be effectively silenced. As a graduate of Southern University at New Orleans (SUNO), an active alumnus, and an elected official, I can appreciate the role that SUNO plays with the City of New Orleans and the State of Louisiana. Talks of merger of SUNO with another institution, or downgrading it to a community or junior college have caused great concern for me and many of my present and past constituents. The occurrence of either of these would result in a serious loss to this city and this state.

EXHIBIT A

Affidavit of Joe A. Terrell, Chairman,
Southern University Board of Supervisors

Joe A. Terrell, being duly sworn, deposes and says:

1. I am the Chairman of the Board of the Southern University Board of Supervisors. This affidavit is submitted in support of defendant Southern University Board of Supervisors' motion to stay the enforcement of the judgment entered heretofore pending the hearing of the Board's motion for a new trial and/or to alter or amend judgment, and the Board's alternate motion for a stay pending the hearing and determination of the Board's appeal to the United States Supreme Court or such other court as may be appropriate.

2. Under pertinent provisions of the Constitution of the State of Louisiana, the Southern University Board of Supervisors is charged with the responsibility for managing the institutions making up the Southern University System. These are Southern University and A&M College, Southern University at New Orleans, Southern University Shreveport-Bossier, and the only historically black professional school in the state, the Southern University Law Center. Between these four institutions and including the systems' staff, the Southern University Board of Supervisors has responsibility for managing a system consisting of over 13,000 students, and nearly 1800 faculty and staff, in addition to a large physical plant. Thus, the Southern University System comprises the largest system of historically black colleges in the nation.

3. Southern University has undertaken a unique role and responsibility to educate minority and disadvantaged students through special developmental education programs and otherwise in order to increase the number of qualified baccalaureate degree-holding minority and disadvantaged persons in our nation. At the same time, it has attempted to expand its offerings to programs

attractive to black and white students regardless of economic or social backgrounds. In connection with this role, it has developed unique administrative and faculty approaches to the needs of students and to the needs of the citizens of the State of Louisiana, which affords it a special place as a voice in higher education governance for integration and for protection and advocacy of the interest of the students it serves.

4. It would be administratively and programmatically impossible to disband the Southern board and to reestablish it again depending on the outcome of the Board's motion for a new trial and/or to alter or amend judgment of Motion for Stay pending appeal of said judgment.

5. It would also be imposible as a practical matter to recapture the loss of productive capacity of the unique management and administrative expertise developed by the Southern University Board over the years and provided to its students and to others served by it during the pendency of defendant's motions and the pendency of any appeal taken respecting the court's judgment.

6. Should Southern University and A&M College be required to undertake selective admissions as a part of its move to doctoral status over a period of three years from the date of entry of judgment, it will have to change drastically its admissions policies and other related policies at a rate that will be destructive of its unique role and mission pending the outcome of defendant's motion for a new trial and/or to alter or amend the judgment or Motion for Stay pending appeal of said judgment.

7. Should the court's order take effect within the ordinary delays permitted by law, the Southern University Law Center will be unable to attract students or retain faculty or staff due to the then impending elimination of the law school or pending the outcome of defendant's motions or an appeal of the judgment herein.

8. The Southern University Law Center, since 1963, has graduated more than 1,088 lawyers, of whom 789

(72.5%) have passed the Louisiana State Bar, rendering it among the major producers of black lawyers in the nation. In the absence of the continued and unthreatened operation of the law school during the pendency of the defendant's motion and appeal, the productive capacity of the Southern Law School would be severely affected.

9. The overall harm that will be suffered by each of the institutions of Southern University and the students who now attend the university and who may desire to attend it in the future, as well as similarly situated faculty and staff, would be irrevocable should the Southern University Law Center be merged into the Louisiana State University Law Center or if significant and dispositive actions are taken along that path, inasmuch these steps cannot be reversed.

10. Should a comunity college system be instituted or undertaken to be instituted in Baton Rouge during the pendency of defendant's motions or pending appeal of said judgment, irreversible and irreparable harm would be done to the opportunity for many disadvantaged students to receive a baccalaureate or professional degree in the State of Louisiana as well as Southern University and A&M College's opportunity to attract other-race students.

11. A stay is necesary to preserve the status quo pending rehearing or appeal.

12. Overall, if a stay is not granted, irreparable harm will result to students now attending the University or who may desire to attend, and similarly situated faculty and staff.

/s/ Joe A. Terrell
JOE A. TERRELL
Chairman
Southern University
Board of Supervisors

/s/ [Illegible]
Notary Public

LOUISIANA STATE BAR ASSOCIATION INFORMATION ON SOUTHERN UNIVERSITY LAW GRADUATES

Year	Graduates Number	Applicants	Number Admitted To Bar
1963	5	4	4(100%)
1964	0	0	
1965	3	2	2(100%)
1966	5	4	4(100%)
1967	1	1	1(100%)
1968	4	3	3(100%)
1969	7	7	7(100%)
1970	12	11	9(82%)
1971	9	9	6(67%)
1972	20M 2D	17	14(82%)
1973	16	15	11(73%)
1974	35	24	18(75%)
1975	47	31	27(87%)
1976	32M 2D	34	27(79%)
1977	36M 5D	35	34(97%)
1978	38M 6D	28	25(89%)
1979	51M 2D	44	38(86%)
1980	50	43	37(86%)
1981	60M 13D	54	51(94%)
1982	54M 8D	52	49(94%)
1983	63M 7D	52	52(100%)
1984	91	74	70(95%)
1985	82M 8D	72	69(96%)
1986	100M 7D	91	86(94%)
1987	102	88	73(83%)
1988	100M 5D	90	72(80%)
Total	1088	885	789(89%)

[4110-12]

REVISED CRITERIA SPECIFYING THE INGREDIENTS OF ACCEPTABLE PLANS TO DESEGREGATE STATE SYSTEMS OF PUBLIC HIGHER EDUCATION

In late 1969 and early 1970, the Department of Health, Education, and Welfare (HEW) notified ten states that they had not dismantled their statewide dual systems of public higher education. The letters sent by HEW at that time advised each state of its failure to adopt measures necessary to overcome the effects of past segregation and notified the states of their obligation to file a statewide plan for the desegregation of their public systems of higher education.

For the past seven years the Court reviewed HEW's efforts to desegregate these systems of higher education. In 1977, this Court found that the Department's effort had not been adequate and ordered the Department to require six of the original ten states to submit new desegregation plans and to set specific standards for those plans.

The Court found that "specific commitments (were) necessary for a workable higher education desegregation plan . . . concerning admission, recruitment and retention of students, concerning the placement and duplication of program offerings among institutions, the role and the enhancement of black institutions, and concerning changes in the racial composition of the faculties involved.

Specifically, this Court entered a Second Supplemental Order on April 1, 1977 directing the Department to transmit to the six states of Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia as well as the Court and the plaintiffs criteria specifying the ingredients of acceptable desegregation plans for their institutions of public higher education. Accordingly, on July 5,

1977, the Department published criteria which were amended one month later to take into account suggestions offered by some of the states.

The Court further directed that HEW require each state to submit, within 60 days of receipt of the criteria, a revised desegregation plan and to accept or reject such plans within 120 days thereafter. In September 1977, in response to HEW's request, the six states submitted desegregation plans. After months of intensive negotiations, the Department announced on February 2, 1978, that it was accepting the plans of Arkansas, Florida, and Oklahoma and not accepting plans submitted by Georgia, North Carolina, and Virginia. On the same date, the Department announced thae it would publish in the FEDERAL REGISTER, revised criteria which are substantially similar to the criteria published in July.

Where HEW has found that a state has not eliminated the remaining vestiges of segregation in its formerly dual system of public higher education, and is, therefore, in violation of Title VI of the Civil Rights Act of 1964, it is required first to attempt to secure compliance by voluntary means. When those effores fail, HEW is required to seek enforcement either administratively or through the courts. 42 U.S.C. 200-1; 45 CFR 200d-1, 45 CFR 80.7(d)(1), 80.8. These revised criteria are issued to assist such states in the preparation of desegregation plans as part of the process of securing voluntary compliance.

HEW originally developed the criteria mindful of the instructions of the Court that they comply with constitutional standards and Title VI, conform with sound educational practices, and take into account the unique importance of black colleges. Based on its experience in applying the criteria to six state systems of higher education over the past months, HEW has determined that the criteria provide specific and effective guidance to the states and at the same time, are sufficiently flexi-

ble to provide for circumstances which may vary from state to state.

PREAMBLE

I. HISTORY OF LEGAL PROCEEDINGS

The criteria set forth below initially were developed by the Department of Health, Education, and Welfare (HEW) pursuant to the specific direction of the United States District Court for the District of Columbia in *Adams* v. *Califano*, Civil Action No. 3095-70, Second Supplemental Order (D.D.C. April 1, 1977). The Court's Order arose from a lawsuit initiated in 1970 to require HEW to take action to enforce the provisions of Title VI of the Civil Rights Act of 1964.[1]

In 1969, the Office for Civil Rights (OCR) determined that ten States[2] were continuing to operate segregated higher education systems in violation of Title VI of the 1964 Civil Rights Act. Although the States were notified of this finding and were requested to submit corrective plans, no administrative enforcement actions were taken when the States failed to submit plans or submitted plans unacceptable to HEW. In February 1973, the *Adams* litigation resulted in a ruling requiring that HEW take appropriate enforcement action. *Adams* v. *Richardson*, 356 F.Supp. 92 (D.D.C. 1973). That ruling was unanimously affirmed by the full United States Court of Appeals for the District of Columbia Circuit, although the Court of Appeals modified the District Court's order and directed HEW to attempt to secure acceptable desegrega-

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[1] Title VI of the Civil Rights Act of 1964 provides: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. 2000d.

[2] Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Virginia.

tion plans from the ten States before commencing enforcement proceedings. *Adams* v. *Richardson*, 480 F.2d 1159 (D.C. Cir. 1973).

In 1974, HEW accepted desegregation plans from eight of the ten States[3] Reports covering the first year of implementation were submitted to HEW in 1975. Subsequently, the plaintiffs in the *Adams* case sought further relief and on April 1, 1977, the Court ruled that the 1974 plans did not comply with the criteria previously announced by HEW and that as implemented the plans had failed to achieve significant progress toward higher education desegregation. Based on these findings, the Court ordered HEW to develop and issue within 90 days specific criteria to guide the six States[4] in the preparation of revised desegregation plans.

II. LEGAL AND EDUCATIONAL PRINCIPLES

A. *De jure segregation*

These criteria will be applied to a state which formerly operated a dual system of public higher education under state law, if the Office for Civil Rights determines after investigation that the state has failed to remove the vestiges of racial segregation in its system in violation of Title VI.

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[3] Louisiana refused to submit a plan and was referred to the Department of Justice, which filed a lawsuit, (*United States* v. *Lousiana*), Civil Action No. 74-68 (M.D. La.) in January 1974. The plan submitted by Mississippi was deemed unacceptable by HEW and the matter was referred to the Department of Justice, which filed a lawsuit, *Ayers* and *United States* v. *Finch*, Civil Action No. D.S. 75-9-K (N.D. Miss.), in March 1975.

[4] The April 1, 1977, Order excludes Pennsylvania (by agreement of the parties to the *Adams* lawsuit) and Maryland, which commenced a separate injunctive suit againsht HEW's enforcement proceedings now pending in the United States Court of Appeals for the Fourth Circuit (*Mandel* v. *HEW*, No. 76-1494), as well as Louisiana and Mississippi.

B. *Affirmative duty to take effective steps to eliminate de jure segregation*

Where there has been past de jure segregation, states are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination. HEW's regulation implementing Title VI provides that

> In administering a program regarding which the recipient has previously discriminated against persons on the ground of race * * *, the recipient must take affirmative action to overcome the effects of prior discrimination. 45 CFR 30.3(b) (6) (i).

The 14th Amendment also calls for more than mere abandonment of discrimination through the state's adoption of passive or neutral policies. The United States Supreme Court has held that public school officials have "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which discrimination would be eliminated root and branch." *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 437-38 (1968).

The affirmative duty to desegregate applies with equal force to higher education. *Norris* v. *State Council of Higher Education*, 327 F. Supp. 1368 (E.D. Va. 1971), *aff'd per curiam*, 404 U.S. 907 (1971); *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M.D. Ala. 1967), *aff'd* 369 U.S. 215 (1967); *Geier* v. *Dunn*, 337 F. Supp. 573 (M.D. Tenn. 1972). Additionally, the Supreme Court has made it clear that desegregation plans are not adequate unless they are effective. *See Green* v. *County School Board of New Kent County, supra; Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

Consistent with the requirements of Title VI these criteria set forth the elements of a desegregation plan which would eliminate the effects of past discrimination.

C. *Statewide approach*

The Court of Appeals in its en banc opinion in *Adams* directed HEW to undertake a statewide approach and noted the serious problem created by the lack of viable statewide coordinated planning in higher education:

> The problem of integrating higher education must be dealt with on a statewide rather than a school-by-school basis.[10]

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[10] It is important to note that we are not here discussing discriminatory admission policies of individual institutions. To the extent that such practices are discovered, immediate corrective action is required, but we do not understand HEW to dispute that point. This controversy concerns the more complex problem of systemwide racial imbalance. *Adams* v. *Richardson, supra,* 480 F.2d at 1164-1165 (footnote in original).

The Department has followed this approach since 1969 because we believe statewide planning is consistent with sound educational policy. Thus, these criteria require not only that each institution pursue nondiscriminatory student admission and faculty and staff employment practices, but also that the state system as a whole develop a comprehensive and coordinated statewide desegregation plan embodying those specific affirmative, remedial steps which will prove effective in achieving significant progress toward the disestablishment of the structure of the dual system and which address the problem of "systemwide racial imbalance."

D. *Specificity—goals and timetables*

The District Court in *Adams* concluded that the plans previously adopted by the states had failed to achieve adequate desegregation progress and lacked specific commitments for change as concerns the desegregation of student bodies and faculties, enhancement of traditionally black institutions, and desegregation of the governing boards in higher education systems.

The District Court directed HEW to prepare criteria which would identify for the states the specific elements to be included in their revised desegregation plans. As the District Court stated in response to plaintiffs' oral argument on January 17, 1977:

> What I do want them to do though is be under the compulsion of a court order to submit to the states certain *specific* requirements which the states must respond to and they should be given a timetable for communicating with the states, and the states should be given some kind of timetable within which to make response. (Transcript, January 17th ruling; emphasis supplied.)

In *Geier* v. *Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977), the Court quoted its Order of December 23, 1969, expressing its dissatisfaction with a state submitted desegregation plan in that the plan as submitted "lacks specificity, in that there is no showing of funds to be expended, no statement of the number of students to be involved, and most importantly, no time schedules for either the implementation of the projects or the achievement or any goals." 427 F. Supp. at 646.

The Supreme Court has maintained that in a system with a history of segregation there is a need for remedial criteria of sufficient specificity to assure compliance with the law. See *Swann*, supra at 25-26.

In keeping with the Court's view that the Department should submit specific requirements to the states, numerical goals and timetables are set forth in the criteria. The goals are established as indices by which to measure progress toward the objective of eliminating the effects of unconstitutional de jure racial segregation and of providing equal educational opportunity for all citizens of these states. They are benchmarks and provide the states the clear and specific guidance called for by the Court.

These goals are not quotas. The Department is opposed to arbitrary quotas. Failure to achieve a goal is not sufficient evidence, standing alone, to establish a violation of Title VI. In addition, the Office for Civil Rights upon a showing of exceptional hardship or special circumstances by a state, may modify the goals and timetables. Nevertheless, the states are under a statutory obligation to devise and implement plans that are effective in achieving the desegregation of the system.

Most importantly, under these criteria and the goals they set, all applicants must be able to compete successfully. States' efforts under these criteria need not and should not lead to lowering academic standards. States may need to innovate in seeking out talented students who will profit from higher education. They may need to broaden definitions of potential; to discount the effects of early disadvantage on the development of academic competence; and to broaden the talents measured in admissions tests. But new and different yardsticks for measuring potential are not lower standards. They can be more valid measures of true potential and talent, taken as a whole, these criteria seek to preserve and protect academic standards of excellence.

E. *Special considerations in developing criteria for desegregation in higher education*

A state system of higher education, as with an elementary and secondary school district, is held to an affirmative duty to take remedial action to correct past practices of segregation and discrimination. However, the nature of the remedial action required of a higher education system will differ from that required of a local education district. The court of Appeals in *Adams* noted:

> However, we are also mindful that desegregation problems in colleges and universities differ widely from those in elementary and secondary schools, and that HEW admittedly lacks experience in dealing

> with them. * * * As regrettable as these revelations are, the stark truth is that HEW must carefully access the significance of a variety of new factors as it moves into an unaccustomed area. 480 F.2d at 1164.

In *Norris* v. *State Council of Higher Education*, 327 F. Supp. 1368, 1373 (E.D. Va. 1971), aff'd per curiam, 404 U.S. 907 (1971), the court held:

> The means of eliminating discrimination in public schools necessarily differ from its elimination in colleges, but the state's duty is as exacting.

And in *Sanders* v. *Ellington*, 288 F. Supp. 937, 943 (M.D. Tenn. 1968), the court stated:

> Now in considering the time element for presentation of a plan, I have thought of the complexities of the problem. I recognize that the simple remedies which might be available to a county school board where there is involved a compulsory system of education, a free system of education, and assignment of students, are not available here. Colleges are not compulsory and everyone can testify that they're not free.

Higher education differs from elementary and secondary education in many other ways. Besides being voluntary rather than compulsory, higher education operates on a statewide or regional basis, not local; there are no "attendance zones" in higher education; higher education programs vary from institution to institution and are not uniform; students are free to leave the state or to attend private colleges in pursuit of a higher education.

Furthermore, from state to state significant differences are to be found and must be taken into consideration. In some states strong centralized "system" exists including four year and two year institutions; in others, the four year and two year institutions report to separate boards;

in yet others, each institution operates under its own independent board. While none of these differences relieves a state of its obligations under Title VI or its constitutional duties, they must be taken into account in fashioning an appropriate set of criteria to be applicable to six states.

Accordingly, while desegregation cases involving individual elementary and secondary school districts are a guide to a state's duty to take corrective action, they are not dispositive of the particular methods to be designed for the dismantling of a dual system of higher education, for the desegregation of a statewide system, for the removal of the vestiges of racial segregation, and for the correction of "systemwide racial imbalance." As the courts in *Adams* have noted, these are indeed "complex issues. These criteria are designed specifically for the higher education systems of these six states based on a careful consideration of relevant statutes and court opinions and with due consideration to the unique characteristics of higher education.[5]

F. *The unique role of the traditionally black colleges*

In keeping with the instructions of the Court, the criteria recognize the unique importance of traditionally black colleges in meeting the educational needs of black students. More than 80 percent of all black college graduates have been trained at[6] black colleges. In the mid-seventies, black colleges continue to graduate almost forty percent of all blacks who receive[7] college degrees.

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[5] For a useful discussion of these issues see Note, "The Affirmative Duty To Integrate Higher Education," 70 *Yale Law Journal* 666 (1970).

[6] See Elias Blake, Public Policy and the Higher Education of Black Americans." Staff Report, Subcommittee on Constitutional Rights of the Committee on the Judiciary, 94th Cong., 2d Sess. 1976.

[7] National Center for Education Statistics, Earned Degrees Survey, 1975-76.

Thus it is with good reason that the Court of Appeals in *Adams* recognized the need to take into account "the special problems of black colleges."

> Perhaps the most serious problem in this area is the lack of state-wide planning to provide more and better trained minority group doctors, lawyers, engineers and other professionals. A predicate for minority access to quality post-graduate programs is viable, co-ordinated state-wide higher education policy that takes into account the special problems of minority students and of Black colleges. * * * (T)hese Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education. 480 F.2d at 1164-1165.

Again in 1977, the District Court in its Second Supplemental Order, p. 4, quoted the above language of the Court of Appeals and went on to state:

> The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education. The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks. Without suggesting the answer to this complex problem, it is the responsibility of HEW to devise criteria for higher education desegregation plans which will take into account the unique importance of Black colleges and at the same time comply with the Congressional mandate.

The Department does not take this language to mean that the traditionally black institutions are exempt from the Constitution or the requirements of Title VI. To the contrary, traditionally black and traditionally white institutions are subject to the same constitutional and congressional mandate to provide an education to all citizens

without discrimination or segregation. White and black institutions are to function as part of a unitary system free of the vestiges of state imposed racial segregation. However, as the Court has instructed, the transition to a unitary system must not be accomplished by placing a disproportionate burden upon black students, faculty, or institutions or by reducing the educational opportunities currently available to blacks.

To achieve the objectives of Title VI, precise methods will need to be fashioned for institutions within a state, each appropriate to the task of overcoming the effects of prior discrimination in the particular instance. Each method will be enforced with equal force and determination. Each method is designed to achieve the same constitutional standard.

III. CONSULTATION PROCESS

In the preparation of the criteria originally promulgated pursuant to court instruction, the Department undertook an extensive consultation process within the Department and with interested outside parties. In an effort to assure that these criteria were both legally and educationally sound, a departmental task force was established to guide their development. The task force combined the multiple disciplines and varied expertise needed to resolve the complex issues and educational policies involved in this desegregation process. Serving on the task force were the General Counsel, the Director of the Office for Civil Rights, the Assistant Secretary for Education, the Commissioner of Education, and the Assistant Secretary for Planning and Evaluation.

The Department also embarked on a program of open dialogue and consultation with parties of interest. The task force members conferred with representatives of the six states collectively and individually. The representatives included college presidents, education officials, and aides to Governors. A special meeting was held with stu-

dents who attend the public colleges in the six states and representatives of several national student organizations. Four meetings were held with officials of the amicus curiae, National Association for Equal Opportunity in Higher Education, an association of the presidents of 110 predominantly black colleges and universities, both state supported and private. Two panels of nationally recognized educators met for half day sessions to advise the Department.

Finally, plaintiffs' representatives devoted many hours to reviewing and commenting on drafts of the criteria. They also convened a meeting for the Department with 28 citizens from these six states who are most familiar with the higher education desegregation efforts in their respective states.

The Department assumes full and sole responsibility for the content of these criteria. The consultations enumerated above were exceedingly helpful to the Department in the preparation of these criteria, but these discussions do not imply concurrence in the criteria in whole or in part by other parties.

Higher educational systems in these and other states are undergoing difficult adjustments caused by fiscal and demographic trends beyond the control of individual states. Accordingly, the criteria developed for the six states under the *Adams* Order, focused on desegregation efforts to be undertaken within the next five years. Similarly, OCR will seek plans that contain five-year goals from other states which are found to have a duty to eliminate the vestiges of duality in their systems of higher education.

As each state attains the goals set forth in its plan, OCR will assess, in cooperation with that state, the progress thereby made in order to determine what additional steps, if any, are necessary to complete the desegregation process. Furthermore, OCR will periodically review these

criteria to assure their adequacy in meeting constitutional requirements, their consistency with rulings of the courts in higher education desegregation, and the mandate of Title VI.

ELEMENTS OF A PLAN

I. DISESTABLISHMENT OF THE STRUCTURE OF THE DUAL SYSTEM

An acceptable plan shall commit the state to the goal of organizing and operating the system and institutions of higher education in a manner that promises realistically to overcome the effects of past discrimination and to disestablish the dual system, and which assures that students will be attracted to each institution on the basis of educational programs and opportunities uninhibited by past practices of segregation.

To achieve the disestablishment of the structure of the dual system, each plan shall:

A. *Define the mission of each institution within the state system on a basis other than race.*

Each mission statement shall include at a minimum:

1. The level, range and scope of programs and degrees offered;

2. Geographic area served by the institution; and

3. The projected size of the student body and staff, for each year of the life of the plan.

B. *Specify steps to be taken to strengthen the role of traditionally black institutions in the state system.*

In support of the specific steps required by I.B., the plan shall include:

1. Commitments that necessary improvements will be made to permit the traditionally black institutions to fulfill their defined mission. These improvements will extend to physical plant and equipment; quality and range of

program offerings; number and quality of faculty; student, faculty and professional staff services; student financial assistance, and other financial support;

2. Commitments that traditionally black institutions will have the resources (including those enumerated in item 1 above), which are at least comparable to those at traditionally white institutions having similar missions.

3. An assessment of the physical plant at traditionally black institutions; and

4. A detailed discription of the resources, expressed in dollars and in numbers of personnel to be assigned, which the state system will provide (and the source for such funds) in order to implement the steps specified in I.B. reported by year for the life of the step or activity.

C. *Commit the state to take specific steps to eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions in the same service area.*

To this end, the plan shall identify existing degree programs (other than core curricula) among institutions having identical or overlapping service areas and indicate specifically with respect to each area what steps the state will take to eliminate such duplication. The elimination of such program duplication shall be carried out consistent with the objective of strengthening the traditionally black colleges.

D. *Commit the state to give priority consideration to placing any new undergraduate, graduate, or professional degree programs, courses of study etc., which may be proposed, at traditionally black institutions, consistent with their missions.*

E. *Commit the state to withhold approval of any changes in the operation of the state system or of any institutions that may have the effect of thwarting the achievement of its desegregation goals.*

F. *Commit the State to advise OCR of proposed major changes in the mission or the character of any institution within the state system which may directly or indirectly affect the achievement of its desegregation goals prior to their formal adoption.*

Such proposed changes include but are not limited to: the establishment or major expansion of programs of study, of departments, or institutions; the alteration of two year to four year institutions; the conversion of a private to a public institution; or the closing or merger of institutions or campuses.

G. *Specify timetables for sequential implementation of the actions necessary to achieve these goals as soon as possible but no later than within five years (by the close of the fifth full academic year after the plan is accepted) unless compelling justification for a longer period for compliance is provided to and accepted by the Department.*

The plan shall include interim benchmarks and goals from which progress toward these objectives may be measured. These timetables and benchmarks shall be appropriate to the nature of the action to be taken. For example, studies of physical plant and resources comparability should be completed promptly; corrective actions (including capital construction) will require longer time periods.

H. *Commit the state and all its involved agencies and subdivisions to specific measures for achievement of the above objectives.*

Such measures may include but are not limited to establishing cooperative programs consistent with institutional missions; reassigning specified programs, course offerings, resources and/or services among institutions; realigning the land grant academic programs so that research, experiment and other educational services are redistributed on a nonracial basis; and merging institutions

or branches thereof, particularly where institutions or campuses have the same or overlapping services areas. The measures taken pursuant to this section should be consistent with the objective of strengthening the traditionally black colleges. A detailed description of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the goals listed above will be rejected by OCR. Revised measures will be required before the plan can be accepted.

II. DESEGREGATION OF STUDENT ENROLLMENT

An acceptable plan shall commit the state to the goal of assuring that the system as a whole and each institution within the system provide an equal educational opportunity, are open and accessible to all students, and operate without regard to race and on a desegregated basis.

To achieve the desegregation of student enrollment, each plan shall:

A. *Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system, taken as a whole, the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.*

B. (1) *Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution; and*

(2) *Adopt the objective of reducing the disparity between the proportion of black high school graduates and*

the proportion of white high school graduates entering[8] *traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the disparity by at least fifty per cent by the final academic year of the plan. However, this shall not require any state to increase by that date black student admissions by more than 150% above the admissions for the academic year preceding the year in which the plan is requested by HEW.*[9]

C. *Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system, and enter such schools.*

This goal (and interim benchmarks or goals) shall be seperately stated for each major field of graduate and professional study. To assure that this goal can be met in the immediate future special recruitment efforts should be considered at traditionally black institutions. Particular attention should be given to increasing black student enrollment and graduation from those traditionally white four year undergraduate institutions which serve as the feeder institutions for the graduate and professional

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[8] For the purposes of this subsection, the term entering includes first-time transfers from two year and other institutions.

[9] Thus, where the present entry by black students in four year trationally white institutions is at a rate of 1,000 students per year and a fully proportional rate would be 3,000 students per year, the state's goal would be an entry rate of 2,000 students per year five years thereafter. A state where the present entry is at a rate of only 500 students per year and full proportionality would be 3,000 students per year would not by that date have to close half the gap (by a rate of 1,750 per year) but only achieve an entry rate of 1,250 students, which is 150% over its present rate of 500.

schools. Achievement of this goal is of particular importance in light of the specific concern expressed by the Court of Appeals in Adams. In assessing progress toward this goal, OCR will give consideration to the number of blacks from each state who enroll in graduate and professional schools outside the state system.

D. *Adopt the goal of increasing the total proportion of white students attending traditionally black institutions.*

Increased participation by white students at traditionally black institutions must be a part of the process of desegregation of the statewide system of higher education. However, pursuant to the admonition of the courts in *Adams*, "The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks." Civil Action No. 3095-70, Second Supplemental Order at p. 4. The following steps are designed to guard against the diminution of higher educational opportunities for black students, to take into account the unique importance of traditionally black colleges and to comply with the mandate of Title VI. Establishment of numerical goals for the enrollment of white students at traditionally black institutions must be preceded by an increasing enrollment of black students in the higher education system and at the traditionally white institutions, as is required by Section II of these criteria. It must also be preceded by the accomplishment of specific steps to strengthen the role of traditionally black institutions, eliminate program duplication, locate new programs at black institutions, and by such other measures as are set forth in Section I.

OCR shall annually review the progress made by each state in increasing participation by black students in higher education and in the disestablishment of the dual school system. Two years after the commencement of the plan, and consistent with such progress, each state system

shall specify annual numerical goals for increasing the participation of white students attending the traditionally black institutions.

E. *Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two years, four year and graduate public institutions of higher education, and establish interim goals, to be specified by the state system for achieving annual progress.*

F. *Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.*

G. *Specify numeric goals for II. A, B, and C, and timetables for sequential implementation of actions necessary to achieve these goals as soon as possible but not later than within five years unless another date is specified in this section.*

H. *Commit the state and all its involved agencies and subdivisions to specific measures to achieve these goals.*

Such measures may include, but are not limited to reviewing, monitoring, and revising, as necessary, procedures for student recruitment, admissions, compensatory instruction, counseling, financial aid, and staff and faculty development programs. The detailed description of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the numerical goals will be rejected by OCR. Revised measures will be required before the plan can be accepted.

III. DESEGREGATION OF FACULTY, ADMINISTRATIVE STAFFS, NONACADEMIC PERSONNEL, AND GOVERNING BOARDS

An acceptable plan shall commit the state system to the goal of increasing the number and proportion of black employees, academic and non-academic, throughout the system and of increasing representation of black citizens among appointive positions on the governing boards of the state system and of individual institutions.

To achieve the desegregation of faculty, administrators, other personnel, and governing boards, each plan shall:

A. *Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with masters degrees in the appropriate discipline from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market areas, whichever is greater.*

B. *Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.*

C. *Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall be at least equal the proportion of black persons in the relevant labor market area.*

D. *Assure hereafter and until the foregoing goals are met that for the traditionally white institutions as a*

whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

E. *Specify numeric goals and timetables for sequential implementation of the actions necessary to achieve these objectives including interim benchmarks from which progress toward the objectives may be measured.*

These goals, timetables, and benchmarks shall be established in light of, and shall specify, the current and projected rates of vacancies in the various job categories, present and projected labor market availability, and other relevant factors.

F. *Commit the state system to take specific measures to achieve these objectives.*

Such measures may include, but are not limited to employment programs providing centralized recruitment, vacancy and applicant listings; transfer options; faculty development programs permitting release time for black faculty to attain the terminal degree; and the interchange of faculty on a temporary or permanent basis among traditionally white and traditionally black institutions within the state system. The detailed description of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the goals listed above will be rejected by the OCR. Revised measures will be required before the plan can be accepted.

G. *Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.*

IV. SUBMISSION OF PLANS AND MONITORING

A. After HEW has determined that a state has not eliminated the vestiges of desegregation in its former dual system of public higher education, the state shall submit to OCR a desegregation plan for its system of public higher education to implement the foregoing criteria.

1. The plan shall commit the state to substantial progress toward each of the goals in the first two years of the plan.

2. The plan shall be signed by the governor and by each official or designated person representing the agencies, associations, commissions, offices, and/or institutions responsible for adopting the systemwide and institutional goals described therein. Such persons or entities must be authorized under state law to perform all actions necessary to achieve these goals.

3. The plan shall certify that achievement of the goals and interim benchmarks specified therein has been adopted as official policy of each official or agency.

B. It is recommended that each state establish a biracial citizens advisory/monitoring committee to assist the state in monitoring the implementation of the plan.

C. Each state shall submit to OCR by August 15 of each year after a plan's acceptance, a comprehensive narrative assessment of its desegregation efforts in the most recent academic year. This narrative assessment shall include:

1. A description of the specific measures which have been taken to achieve the objectives enumerated in the plan and in the criteria;

2. A description of the results achieved, including quantitative indices where appropriate or required;

3. An analysis of the reasons why any steps taken proved inadequate or insufficient; and

4. A description of the steps the state will take to achieve progress and to maintain the timetable set forth in the plan.

D. OCR shall review such narrative reports. If good cause for the failure to meet interim goals is not demonstrated, OCR may impose more stringent requirements, including advance approval by OCR of desegregation methods, in order to assure achievement of the goals of the plan. In the alternative, the Department may initiate enforcement proceedings under Title VI of the Civil Rights Act of 1964, if compliance with Title VI cannot be achieved by voluntary means.

E. Each plan shall provide that the state will furnish to OCR statistical reports, assessments, and such other information as OCR may deem necessary from time to time in order to determine the effectiveness of the state's efforts to achieve the goals described in these criteria. Such information shall include annual statistical reports in substantially the same format used previously by the affected states pursuant to earlier desegregation plans. Specific dates for the submission of the reports will be established by OCR. In the event that subsequent developments call for the submission of additional data, such requirements will be announced after consultation with the states, and the states and institutions shall have sufficient time to develop the system needed for the gathering of additional data.

V. DEFINITIONS

As used in these criteria:

A. "Department" refers to the U.S. Department of Health, Education, and Welfare. In instances where the "Department" is to take certain actions, they may be

performed by the Office for Civil Rights or the Director, Office for Civil Rights, on behalf of the Department.

B. "Institution" means any school, college, junior or community college, university, professional or graduate school, administered by or as an agency of the state government. Four year institution means any school, college, or university that offers a baccalaureate or graduate degree. For the purpose of these criteria, "institution" does not refer to private schools or colleges.

C. "State systems" means the aggregate of all state public institutions of higher education within the state, whether or not under the governance of the same state agency or board.

D. "Student" means any person enrolled in an instructional program, whether full-time or part-time, subject to exceptions to be specified by the Office For Civil Rights.

E. "Faculty" means all persons employed by an institution as full-time instructional personnel.

F. "Labor market area" means the geographical area in which an institution or campus traditionally recruits or draws applicants possessing the requisite credentials for vacancies in faculty, administrative, or non-academic personnel positions.

G. "Governing board" means that appointed or elected body, whether or not responsible to the governor of a state or to the state legislature, which is charged under state law with the ultimate responsibility for the administration and operation of institutions within the state system of public higher education. A "governing board" may be responsible for the entire system, for a single campus or institution thereof, or for a specified group of campuses or institutions.

Dated: February 2, 1978.

DAVID S. TATEL,
Director, Office for Civil Rights.

[FR Doc. 78-4091 Filed 2-14-78; 8:45 am]

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assitance from the Department of Health and Human Services.

§ 80.2 Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable that a program is not covered. Federal financial assistance under statutes now in

force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or their benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which

is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(*a*) Projects under the Public Works Acceleration Act, Pub. L. 87-658, 42 U.S.C. 2641-2643.

(*b*) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(*c*) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(*d*) Assistance to rehabilitation facilities under the Vocational Rehabilitaton Act, 29 U.S.C. 32-34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal

financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 80.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such

assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision or similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assist-

ance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods or administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school ssytem is entered after submi ion of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurance for institutions.* (1) In the case of any application for Federal financial assistance to an institu-

tion of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department officials, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 80.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In federally assisted programs for the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition

extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e).

(b) In federally-affected area assistance (Pub. L. 815 and Pub. L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(d) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treat-

ment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(e) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professional qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(f) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(g) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(h) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance race, color or national origin.

(i) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of specific arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may eseablish special recruitment pol-

icies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

§ 80.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency,

institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible non-compliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.3.

(3) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an applicant therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No other suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department officials has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to

comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other persons. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 80.9 Hearings

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant

or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 80.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evi-

dence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be an official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offerde or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance wiht this part and the regulation of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings

of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 80.10.

§ 80.10 Decisions and notices.

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the iniital decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 80.9(a) the

reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), and (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part,

to which this regulation applies, and many contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 80.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 80.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be stored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 80.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health and Human Services, and of Labor, 45 CFR Part 70; (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order,

regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (3) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

(b) *Forms and instructions.* The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 80.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

§ 80.13 Definitions.

As used in this part—

(a) The term "Department" means the Department of Health and Human Services, and includes each of its operating agencies and other organizational units.

(b) The term "Secretary" means the Secretary of Health and Human Services.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under § 80.10(a) through (d).

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "States" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the re-

cipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals) or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities include the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Art. 14, § 39

TRANSITIONAL PROVISIONS

PART IV

Section 38 of this Part provided an official ballot form for ratification of the proposed Constitution of 1974, and approval of alternative propositions. Section 39 and 40 provided text for Article VIII, Education, and Article XIV, Sections 1, 2, 3, 4 and 5 in the event Alternative B was approved.

The proposed Constitution was ratified by the people at an election held on April 20, 1974, and Alternative A was approved.

The provisions of section 38, 39 and 40 are included in note type below for convenient reference.

§ 38. Alternative Proposition

Section 38. There shall be submitted to the people for the ratification of the proposed new constitution an official ballot containing the following propositions and instructions to voters:

OFFICIAL BALLOT

(Instructions to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed constitution and the alternative propositions are available for inspection at the polling place. If the proposed constitution receives a majority of the votes cast thereon and Alternative A below receives a majority of the votes cast on the alternative propositions, the proposed constitution shall become the Constitution of Louisiana. If the proposed constitution receives a majority of the votes cast

thereon and Alternative B receives a majority of the votes cast on the alternative propositions, the proposed constitution shall become the Constitution of Louisiana, except that Article VIII of the proposed Constitution shall be deleted therefrom and Alternative Article VIII shall be inserted in lieu thereof. If the proposed constitution fails to receive a majority of the votes cast thereon, both of the alternative propositions shall also fail.)

Do you favor or oppose the adoption of the proposed 1974 Constitution?

(Vote for one)

FOR adoption of the proposed 1974 Constitution...1 ☐

or

AGAINST adoption of the proposed 1974 Constitution .....2 ☐

ALTERNATIVE PROPOSITIONS

If the proposed 1974 Constitution is adopted, do you prefer (A) the governance of higher education by a Board of Regents and management boards for the LSU system, the Southern University system, and all other state colleges and universities, or (B) the governance of higher education solely by a Board of Regents?

(Vote for one)

ALTERNATIVE A For governance of higher education by a Board of Regents and management boards for the LSU system, the Southern University system, and all other state colleges and universities .....3 ☐

ALTERNATIVE B For governance of higher education solely by a Board of Regents .....4 ☐

A STATUS REPORT: BLACK STUDENT ENROLLMENT AND GRADUATION TRENDS IN THE COMMUNITY COLLEGE SYSTEM OF FLORIDA 1976-77 TO 1984-85

EXECUTIVE SUMMARY

This report was authorized by the Florida Advisory Committee on the Education of Blacks. The committee was concerned about the future role and development of Florida's educational system and its relationship to the number of Blacks enrolled and graduating from higher education in Florida.

While presenting an overview of trends which affect black student enrollment in public postsecondary educational institutions, the primary purpose of the report is to present a comprehensive chronology of black student enrollment in public postsecondary educational institutions in Florida. The aim of the literature review is to show black student enrollment from 1976-77 to 1984-85 in the Community College System. This examination focuses not only on black student enrollment as a percentage of total enrollment, but also presents data on each of the public twenty-eight community colleges in terms of the number and types of degrees earned by Blacks.

Research Questions

This study was guided by these four research questions:

1. What have been the enrollment trends for black students at institutions in the Community College System System;
2. What have been the degree-granting trends for black students at institutions in the Community College System;

3. What have been the enrollment trends for black community college transfer students at institutions in the State University Ssytem in Florida?; and

4. What have been the degree-granting trends for black community college transfer students in the State University System in Florida?

Sources of Data

The enrollment and graduation data presented in the study were obtained from the Florida Board of Regents, State Board of Community Colleges, Postsecondary Education Planning Commission, Southern Region Board and published and unpublished documents. The data are organized in tables, charts and graphs. The tables depict the enrollment and graduation data for the community colleges total populations and black students. There are also tables that show enrollment, attrition and graduation data for community colleges total population and black students in the public universities. Those colleges appear in alphabetical order by name.

Graphs and charts are presented only for the purpose of providing an alternative means of displaying the data.

Major Findings of the Study

The major findings of this study are as follows:

- Black student enrollment declined from the 1978 fall term through the 1985 fall term in 21 of the 28 community colleges.
- Black students were graduated from community colleges at a rate lower than their counterparts.
- The number of students transferring from community colleges into public universities declined from 1976 through 1985.
- Public universities retained other transfer students in greater numbers than they retained black students.

- Black students graduation rates were always one-half or less of the number of black transferees from the community colleges.
- The largest decline in the number of community college graduates occurred between academic years 1983-84 and 1984-85.
- Hispanic students surpassed black students as the largest minority group of community college transfers in public universities from academic years 1980-81 through 1984-85.
- The group with the lowest graduation rate from public universities six years after transferring from community colleges was black students.

RECOMMENDATIONS

The analysis of data and review of the related literature suggest these recommendations:

1. Community colleges should examine their overall recruitment procedures.
2. Community colleges should determine the effectiveness of their recruitment procedures for attracting black students.
3. Community colleges should identify the causative factors in the high rate of attrition among black students.
4. Community colleges should critically examine their methods of preparing black students to master graduation requirements.
5. Community colleges should examine the reasons for the decline in the number of black students with associate in arts degrees transferring into the State University System.

6 Public universities should examine their procedures for recruiting black students with associate in arts degrees.

7. Public universities should examine the causes of the high attrition among black transferees.

8. Public universities should examine their methods of preparing black community college transferees for graduation.

ACKNOWLEDGEMENTS

This report was made possible by the efforts of many people. The author wishes to express his gratitude to them. Although space does not permit mention of all those involved, several must be singled out.

Without the assistance of two key individuals, data on the universisies and community colleges could not have been obtained. Appreciation is given to Mr. Lillie Shelton, EAEO officer of the State University System of Florida, and Dr. Dianne Brown, EAEO officer for the Division of Community Colleges in Florida. It was through their collective input that the need for this kind of study was made apparent.

Thanks are also extended to members of the Advisory Committee on the Education of Blacks in Florida, Ms. Dorothy Williams, staff member to the committee; and consultants who worked with the data during its various stages of completion.

Dr. Richard Campbell of Minority Research, Inc., directed computer processing.

To all the above, I am grateful.

Leonard Bryant, Jr.

INTRODUCTION

This report stems from the Advisory Committee's concern for the future role and development of Florida's educational system and its relationship to the number of Blacks enrolled in and graduating from higher education in Florida.

While substantial progress has been made in equaling educational opportunities for Blacks in Florida, the plight of Blacks in the community colleges and universities remains severe.

This study tries to answer four basic questions over the critical nine-year period from 1976 to 1986:

1. What have been the enrollment trends for black students at institutions in the Community College System in Florida?

2. What have been the degree-granting trends for black students at institutions in the Community College System in Florida?

3. What have been the enrollment trends for black community college transfer students at institutions in the State University System in Florida?

4. What have been the degree-granting trends for black community college transfer students in the State University System in Florida?

This study examines two very important indices of growth and development 1) trends in black student enrollment; and 2) trends in awarding degrees to black students. These can indicate whether the institutions or systems are stagnant or growing and changing. This study examines the flow of trained black manpower in Florida—a flow that consistently has decreased while the spotlight of social progress has been focused on enrollment increases alone, rather than on graduation increases.

DEFINITION OF TERMS:

Unclassified college level student—a student taking college level courses and not seeking a degree, certification or award.

FTIC—First time in college student; a student not having attended college before.

Florida resident—a student residing in the state of Florida for twelve months or more with the intention of making the state of Florida a permanent home.

SUS—State University System of Florida.

REVIEW OF LITERATURE

INTRODUCTION

The enactment of the Higher Education Act of 1965 committed the country to providing equal opportunity in higher education for all its citizens, regardless of race or economic circumstances. Much has been written since 1956 about the assimilation of Blacks into predominantly white postsecondary educational institutions and the survival of predominantly black colleges and universities. The years since 1965 have also brought about radical changes in both black student enrollment and graduation patterns, as well as in the institutions at which black students matriculate (Allen, 1986).

Prior to 1965, the overwhelming majority of Blacks who attended postsecondary educational institutions were enrolled in predominantly black institutions, most of which were commonly referred to as traditionally black institutions or TBIs. These institutions were established to provide education to Blacks under the "separate but equal doctrine." Until the early seventies, these institutions enrolled more than 50 percent of the black college students in the following states: Virginia, North Carolina,

South Carolina, George, Kentucky, Tennessee, Alabama, Missouri, Arizona, Mississippi, Ohio, Delaware, Louisiana, Texas, Oklahoma and Florida (Hill, 1984). In 1980, the National Center for Education Statistics listed 166 predominantly black colleges.

The number of black students enrolled in traditionally black institutions increased during the early seventies, but the number of black students enrolled in other institutions increased as well. By 1980, two-thirds of all black students attending college were enrolled at predominantly white colleges where white students comprised more than 50 percent of the total student body.

Traditionally black institutions are different from current predominantly black institutions which were not historically black, but which currently have predominantly black student bodies. Historically black institutions, located mainly in the South, were established during Reconstruction and after the passage of the second Morrill Land Grant Act of 1890 (Fleming, 1984). In 1980, only 27 percent of all black college students were attending predominantly black institutions. According to Hill (1984), another seven percent of all black college students were attending colleges where no single ethnic group comprised 50 percent of the student body.

In 1949, approximately 90 percent of the Blacks who had college degrees received them from black institutions; and even as late as 1967, about 80 percent of the bachelor of arts degrees received by Blacks were earned at black institutions (Fleming, 1984). Fleming quotes the results of a 1976 study conducted by Jordan which states that black colleges have produced "75 percent of all black holders of Ph.D. degrees, 76 percent of all black army officers, 80 percent of all black federal judges, and 85 percent of all black doctors." Even today, when many black students are enrolling in predominantly white institutions, Fleming contends that a large number of Blacks

will continue to enroll at predominantly black institutions for personal reasons. These personal reasons include location and proximity to students' homes, cost and psychosocial factors.

In 1984, black students accounted for 9.5 percent of all undergraduates nationwide, 4.8 percent of all graduate students, and 4.8 percent of all students in professional programs (*Chronicle of Higher Education*, July 23, 1986). See Table 1.

TABLE 1

Racial/Ethnic Representation of 1984 Enrollment

	Undergraduate	Gradute	Professional	Unclassified
Am Indian	0.7	0.3	0.4	0.7
Asian	3.2	2.6	3.3	3.2
Black	9.5	4.8	4.8	8.0
Hispanic	4.6	2.2	2.9	4.5
White	79.9	80.2	87.4	82.0
Foreign	2.1	9.9	1.2	1.6
TOTAL	100%	100%	100%	100%

Source: *Chronicle of Higher Education* (July 23, 1986).

Declining Black Student Enrollment

From the mid-sixties to the mid-seventies, the number of black students enrolling in colleges and universities rose dramatically. The relative proportion of black students in total enrollment reached record highs. In the late 1970's, however, the rates of increase in the enrollment of black students unexpectedly began to decline, and black students as a proportion of total enrollment decreased.

According to Anderson (1984), by 1973, the percentage of black students attending predominantly black postsecondary colleges had declined to roughly one-quarter of the previous enrollment. Further, three-fourths of all black college students were attending predominantly white institutions (National Center for Education Statistics,

1982). The increased number of black students in attendance at predominantly white institutions resulted in approximately 57 percent of all black baccalaureate degree recipients in 1977-79 obtaining their degrees from predominantly white institutions (Deskins, 1981). Hill (1984), on the other hand, reports that in 1981:

- Traditionally black institutions still graduated over half of the black bachelor's degree recipients in the 20 states where these institutions are located.
- Traditionally black institutions graduated one-third of the black master's and first-professional degree recipients in these states (TBI states).

A year later, in 1982, Blacks in non-traditional black institutions constituted less than five percent of the degree recipients at all levels; and public institutions awarded a lower percentage of their degrees to Blacks than did private institutions, according to Hill. Mingle (1978) also reported on the increase in black student enrollment from the mid-sixties to the mid-seventies. During this period, according to Mingle, black student enrollment in southern postsecondary institutions increased by more than 290,000 and numbered approximately 462,000. Many of these students were attending predominantly white institutions, whereas in 1982, the number of black students enrolled in predominantly white institutions totaled 84 percent. Before the seventies, traditionally black institutions enrolled more than half of all black college students; but in 1980, these institutions only enrolled approximately 27 percent of all black college students (Darling-Hammond, quoted in *Chronicle of Higher Education*, April 17, 1985).

Marks (1984) states that the greatest decline in black student enrollment occurred at traditionally black institutions: nationally, the decline was 7.1 percent or 28,000. Community Colleges showed the greatest increase in black student enrollment nationally. See Table 2.

TABLE 2

Black Headcount Enrollment by Type of Institution, Fall 1982;
Percent Change of 1980-1982 and 1976-1982;
Percent of Enrollment Black, 1982
United States and SREB States

	Black Headcount Enrollment 1982	Percent Change 1980-82	Change 1976-82	Percent of Enrollment Black 1982
United States	1,034,880	-0.4	6.7	8.8
Public/Four-year	423,407	-3.9	-0.2	8.1
Two-year	409,459	3.3	10.5	10.0
Private/Four-year	181,980	-2.2	5.3	7.5
Two-year	19,834	6.5	85.6	13.6
Predominantly Black*	309,079	-8.2	-7.5	78.2
SREB States	425,580	0.2	8.6	14.0
Public/Four-year	208,845	-1.3	2.9	13.0
Public/Two-year	140,839	2.9	13.8	14.2
Private/Four-year	68,512	-2.0	2.0	15.0
Private/Four-year	7,384	5.4	132.3	27.3
Predominantly Black*	183,321	-4.0	-8.9	83.8

* Includes traditionally black institutions of higher education which are no longer more than 50 percent black.

Source: Marks, Joseph L., *Higher Education Enrollment, 1982*; Trends in Nation and the South, Atlanta: Southern Regional Educational Board, 1984.

In Florida prior to 1952, four, senior-level, predominantly black institutions of higher education offered programs of study leading to the baccalaureate degree. These institutions were Florida Agricultural and Mechanical College (now Florida A & M University), a four-year, public, traditionally black institution located in Tallahassee; and three private institutions: Florida Memorial College in Miami, Bethune-Cookman College in Daytona Beach, and Edward Waters College in Jacksonville. One, two-year, public community college, Washington Junior College in Pensacola, also existed. Washington Junior College was established in September, 1949, by the Florida Department of Education and Escambia County

Board of Public Instruction. Until 1962, Blacks in Florida were only admitted to historical Florida Agricultural and Mechanical University (Smith, 1960).

Eleven other public community colleges were established between 1957 and 1962 with the primary purpose of providing eductional opportunity for Blacks. See Table 3. Those two-year, or community/junior colleges as they were called, operated under the auspices of the local school boards. All were strategically located adjacent to the local black high schools and in counties where public two-year colleges for whites were located (Community College Council, 1957).

An examination of the mission statements in the annual bulletins published by the black junior colleges indicates that the missions of these schools were synonymous with the missions of the colleges serving white students; and focused on offering university transfer, adult-vocational, and terminal-technical programs (McCray, 1982).

Because of their locations in the centers of the black communities, these community colleges for Blacks provide educational opportunities to many black students. For example, in 1964-65, though two of the colleges, Carver in Cocoa and Collier-Blocker in Palatka had been merged with Brevard and St. Johns River Community Colleges, respectively, the 10 colleges still in existence had a combined enrollment of 5,733 students (SERS Statistical Summary, 1984-65). Total enrollment at the state's 34 institutions of higher education (23 predominantly white and 11 predominantly black) totaled 97,789, of which 8,998 were black). Florida Agricultural and Mechanical University accounted for 3,264 of the black students. It is interesting to note that at the two community colleges for Blacks which had been merged with predominantly white community colleges, the number of Blacks attending the merged institutions declined drastically from pre-merger levels. For example, 147 Blacks were enrolled at Brevard Community College and two Blacks were en-

rolled at St. Johns River Junior College (SERS Statistical Report, 1964-65).

TABLE 3

Location, Opening, and Closing of Public Community Colleges in Florida for Blacks

Institution	County	City	Year Opened	Year Closed
Rosenwild	Bay	Panama City	1958	1966
Carver	Brevard	Cocoa	1960	1963
Washington	Escambia	Pensacola	1949	1965
Jackson	Jackson	Marianna	1961	1966
Johnson	Lake	Leesburg	1962	1965
Suwannee River	Madison	Madison	1955	1966
Hampton	Marion	Ocala	1958	1966
Roosevelt	Palm Beach	W. Palm Beach	1958	1965
Gibbs	Pinellas	St. Petersburg	1957	1965
Collier-Blocker	Putnam	Palatka	1960	1964
Lincoln	St. Lucie	Ft. Pierce	1960	1965
Volusia	Volusia	Daytona Beach	1958	1965

Data obtained from files, Division of Community Colleges.

TABLE 4

Enrollment in Florida Junior Colleges:
Year Black Colleges were Phased-out and Enrollment in Predominantly White Colleges for the Same and Following Year

College	Total Enrollment During Phase-Out Year	FTE	Year Phased Out	Enrollment in Predominantly White Colleges: Year Black CC Closed	Enrollment in Predominantly White Colleges: Following Year
Rosenwild	143	115	1966	2,208	3,545
Carver	143	43	1963	4,273	4,922
Washington	361	302	1965	12,043	12,668
Jackson	443	105	1966	2,442	2,509
Johnson	397	258	1965	874	1,223
Swannee River	250	231	1966	1,151	1,271
Hampton	778	271	1966	3,176	3,299
Rossevelt	218	172	1965	5,259	6,432
Gibbs	887	808	1965	8,870	11,438
Collier-Blocker	72	68	1964	1,398	2,326
Lincoln	667	157	1965	2,238	3,300
Volusia	5,245	429	1965	11,739	14,002

Complied from Division of Community Colleges files.

Walter Smith, former president of Florida Agricultural and Mechanical University and a graduate of Gibbs Junior College (A study of the Black Junior Colleges in Florida: 1975-1966), stated ". . . the black junior colleges filled and educational void for the * * *

Overall, in 1964-65, a total of 1,715 black students were enrolled in predominantly white public institutions of higher education in Florida, compared to an estimated 8,500 attending predominately white colleges and universities in 1965-66. Table 4 presents the enrollment at the predominantly black colleges at the time they were phased out and the enrollment in predominantly white colleges for the same year and for the year following the phasing-out of the black colleges.

Nationally, black enrollment increased only nine percent between 1976 and 1982 (Marks, 1985). Further, since 1976, black student enrollment in postsecondary institutions has lagged behind the total postsecondary enrollment by a larger and larger percentage each year. Similarly, the enrollment of Blacks in elementary and secondary schools increased until 1976, and then began to decline. In 1982, an estimated 75 percent of Whites aged 18-20 were high school graduates, but only 58 percent of Blacks in the same age category were high school graduates (Marks, 1985).

In Florida, data submitted to the Department of Education show that among the 1981-82 ninth graders, approximately 45 percent of the black students did not graduate with their classes in 1985; among white students, the figure was 33 percent. Similarly, black students comprised 18.8 percent of the 1982-83 Florida high school graduates, but only accounted for 9.2 percent of the community college enrollment and 8.7 percent of the state

universities' undergraduate enrollment (Master Plan for Florida Postsecondary Education, 1984).

Another article, "Black Enrollments Heading Down," (AGB Reports, July/August, 1986) also attributes the decline in the number of Blacks attending college to a decrease in the rate of Blacks graduating from secondary schools, differences between the academic preparation and performance of black and white students, and reductions in the buying power of student financial aid. The article also indicates that with America's minority population currently increasing at three times the rate of the white population, early intervention programs (already initiated in many states and school systems), might greatly help under-prepared black high school graduates attain the skills needed for college entry.

In Fall 1978, total black postsecondary enrollment reached 1,055,946, up 21 percent from 1976. Table 5 shows that in the South in 1978, black enrollment was reported to be up 4 percent from 1976.

TABLE 5

Black Enrollment in Postsecondary Education: 1979 and 1978

	1976	1978	Percent Change
Full-Time	659,597	654,604	-0.8%
Part-Time	375,083	401,360	7.0%
Total	1,034,680	1,055,964	2.1%

Source: James R. Mingle's *Black and Hispanic Enrollment in Higher Education 1978: Trends in the North and the South,* Atlanta, SREB.

Table 6 shows the decline in numbers of black high school graduates in college from 1967-82.

TABLE 6

Percent of Black and White High School Graduates, Ages 18-19 in College: 1967-83

Year	Black	White
1987	45.0	53.7
1970	43.1	51.3
1976	49.2	49.2
1980	44.1	49.0
1982	41.1	51.3
1983	38.5	53.2

Source: U.S. Bureau of Census. *Current Population Reports*, Population Characteristics, Series P-20.

Table 7 presents racial and ethnic breakdowns of enrollment in college from 1970-84. Fluctuations appear in the pattern.

TABLE 7

Enrollment in Undergraduate College: Proportions, by Race and Year

	Fall of Year						
	1970	1973	1974	1976	1980	1982	1984
White/Caucasian	88.6	88.5	88.6	86.2	86.0	88.2	85.7
Black/Negro/ Afro-American	9.1	7.8	7.4	8.4	9.2	8.5	9.8
American Indian	0.2	0.9	0.9	0.9	0.8	1.0	0.9
Asian-American/ Oriental	0.9	1.1	0.9	2.0	1.4	1.4	1.6
Mexican-American/ Chicano		1,3	1.5	1.7	2.1	0.9	1.0
Puerto Rican-American		0.4	0.6	0.5	0.9	0.9	0.8

Data derived from The American Freshman: National Norms reports.

Data presented in Table 8 confirm several patterns regarding shifts in black student enrollment. First, access of black students to other than black institutions drastically affected the percentage of black students attending the traditionally black institutions. Further, the percent of black enrollment in the South as a percentage of the total enrollment declined sharply, from 70 percent in 1952 to 42 percent in 1978. Blacks as a percent of the total enrollment in the South declined from 1960-70, but rose to 15 percent in 1976, thereby surpassing the 13 percent high in 1952.

TABLE 8

Total Black Enrollment in the South

Year	Total	Pred. White Inst.	Fred. Black Inst.	Blacks as % of Total Enrollment	# of Blacks Attending Pred. Black Colleges	Black Enroll as % of Total Black Enroll
1952	63,000	—	83,000	13%	100%	70%
1960	84,000	3,000	81,000	10%	96%	50%
1965	134,000	24,000	110,000	10%	82%	49%
1970	245,000	98,000	147,000	12%	60%	47%
1976	426,000	243,000	183,000	15%	43%	41%
1978	442,000	266,000	176,000	15%	40%	42%

Source: Southern Education Reporting Service and Fall Enrollment Reports of U.S. Office of Education, *Fall Enrollment and Compliance Reports of the Higher Education General Information Survey* (HEGIS).

Reasons for Declining Black Student Enrollment

One of the reasons given for the decrease in the number of black students pursuing college degrees is the limited number of black professionals hired by predominantly white institutions. An article in the *Chronicle of Higher Education* (June 13, 1984), states that "virtually no gains are being made in increasing minority repre-

sentation in faculties and administration of predominantly white colleges." Several colleges, however, including Pennsylvania State University, have realized that the success of black students is strongly dependent on the addition of black faculty. Such colleges have recruited black faculty to strengthen their academic programs and to attract black students (*Black Issues in Higher Education*, December, 1984). Overall, though, black faculty representation in non-traditionally black institutions has not advanced much beyond the 2.4 percent of full-time faculty which existed in 1979. At several predominantly white institutions, the percentage of black representation is lower today than it was in the seventies. This is the case at predominantly white Florida State University in Tallahassee (*Tallahassee Democrat*, 1986).

Research and Development Update, a publication of The College Board (May, 1986), outlines some of the possible reasons for the decline in the number of black college students. Among these are the following: limitations or caps placed on enrollment in two-year colleges, increases in tuition prompted by decreases in state funding, declines in enrollment among full-time students, inflation and the need for part-time students to take less credits and work fulltime. Many black high school graduates are also entering the military. Between 1976 and 1984, the number of Blacks entering the army increased by 31.5 percent. During the same period, Blacks entering the Navy increased by 76.7 percent.

The results of a survey of black and Hispanic participation in colleges of the Rochester, New York area attempted to find answers to several factors affecting minority enrollment. These factors included: 1) the extent to which minority enrollment was influenced by admissions policies; 2) the impact of financial aid (both the availability and methodology of awards affect minority enrollment); 3) how remedial and support services affect minority enrollment; and 4) -black faculty repre-

sentation. The study confirmed that in the Rochester area, Blacks represent 5 percent of the total undergraduate population; that as enrollment leveled off, fewer minorities, in proportion to whites, were completing and receiving the baccalaureate degree; and that proportionally more minorities receive financial aid than do whites who usually receive grants, as opposed to loans (Taddiken, 1981).

Several studies have attributed the decline in black enrollment from 1970 to the present to decreasing student aid. According to *Research and Development Update*, (May, 1986):

> The financial situation faced by Blacks considering college attendance has become harsher in the 1980's. Not only has family income failed to keep pace with that of Whites and Hispanics, but the substantial increase in single-head-of-family households (with, therefore, a single wage earner at best), makes it most difficult to accumulate even modest savings for college or realistically to consider paying off monies borrowed to attend college. This disparity in income, combined with the shifting composition of the financial aid package . . . , may be the primary deterrent to black college enrollment.

Arbeiter (1986) quotes two studies which indicate that between 1970-71 and 1984-85, the proportion of grants as part of the total financial aid package decreased from 66.1 percent to 44.6 percent. On the other hand, the loan part of the financial aid package increased from 28.9 percent to 51.7 percent. Black students, according to Miller and Hexter (1985), are less apt to borrow than white students. In fact, the authors found that while two-fifths of the Studet Loan Program (GSL) recipients were whites in the low-income bracket, only one-third of the recipients were low-income minorities. Table 9 from the *Research and Development Update*, May 1986, provides

data on the adjusted student aid by race and institutional type.

The availability of financial aid is extremely important to many black students, especially when one considers that nearly half of all black students desiring to attend college come from families whose yearly incomes are below $15,000. This compares with only 10 percent of college-bound whites who come from families in the same income bracket (*Chronicle of Higher Education*, April 17, 1985). In 1983, the difference in mean family income between white and black families was 43.8 percent, up from 36.3 percent in 1970 (*Research and Development Update*, May, 1986).

According to Morris (1979), blacks and other minorities are highly dependent upon federal funds to aid them in financing their education. Morris quotes data from the Higher Education Institute which estimates that black students rely on BEOG and SEOG four to five times as much as white students. In addition, because many black students work to earn money to remain in college, Blacks are disproportionately represented in college work-study programs.

According to Marks (1985), black student access to predominantly white postsecondary educational institutions pushed the proportion of Blacks in higher education in the South to 15 percent of the totals, still below the black representation in the population, which was 19 percent.

The absence of sufficient black faculty at predominantly white colleges has also been listed as a cause for the declining black enrollment. James Blackwell, professor of sociology at the University of Massachusetts, Boston, has indicated that it is of utmost importance that the pool of black faculty and students be expanded at predominantly white institutions because the success of black students is affected by the social climate of the institution. At the

graduate level, the number of doctorates earned by Blacks has declined each year. According to Blackwell, of the Blacks who received bachelor's degrees in engineering in 1985, 40 percent were earned from nine predominantly black engineering schools. Of the 273 predominantly white engineering schools, only 24 had black faculty numbers (Gaynelle Evans in April 30, 1986 *Chronicle of Higher Education*).

TABLE 9

Adjusted Student Aid by Race, Hispanic Origin, and Institutional Type and Control: 1978, 1983

	1978	1983	% Change 1978-1983
All Schools			
White	$1,168	$1,260	+7.9%
Black	1,945	1,854	-4.7
Hispanic	1,484	1,554	+6.1
Total	1,238	1,317	+6.4
2-Year Public			
White	943	967	+2.5
Black	1,074	1,125	+4.7
Hispanic	870	752	-13.6
Total	950	968	+1.9
4-Year Public			
White	878	934	+6.4
Black	1,779	1,654	-7.0
Hispanic	1,275	1,301	+2.0
Total	970	1,026	+5.8
All Private			
White	2,032	2,348	+15.8
Black	2,844	2,790	-1.9
Hispanic	3,238	3,092	-4.5
Total	2,147	2,421	+12.8

Source: CIRP; 1978, 1983 and reproduced in Lee, John B., et al., "Student Aid and Minority Enrollment in Higher Education," p. 18.

Shifts in Enrollment Patterns of Black Students

Any discussion of black enrollment in postsecondary educational institutions must consider the impact of two-year colleges on enrollment patterns. The mission of two-year colleges, access (open door policy), location within the community, and flexible scheduling of courses have been and remain relevant factors in the decline of full-time student's enrollment in four-year institutions. The number of black students attending two-year colleges continues to escalate, but the dropout rate, especially among black students, is higher at two-year colleges than at four-year colleges (*Chronicle of Higher Education*, April 17, 1985).

Morris (1981) asserts that in 1978, 41 percent of the black students attending postsecondary institutions were enrolled in two-year colleges. As the result, Blacks represented 10.9 percent of the total two-year college enrollment and only 8.4 percent of the four-year enrollment.

Hill (1984) states that in 1980, a total of 42 percent of the more than one million black college students were attending two-year institutions. Many students attended part-time or were not pursuing a program of studies leading to a degree; however, 34 percent of the black, full-time, undergraduate-seeking students wore attending two-year colleges in 1980.

Griggs (1980) cites the results of a study conducted by the American Council on Education and reported in the November, 1972 Harvard Education Review. The study revealed that 62 percent of the students attending public two-year colleges came from families whose annual income was under $12,500, compared to students at public universities where only 44 percent of the students enrolled were from families with an annual income under $12,500. According to Griggs, "the community college represents a big holding operation for those students who cannot afford to go to a senior institution."

According to Marks (1984), part-time enrollment growth rates have doubled the growth rates of full-time enrollment. This was evidence in 1982 when part-time students represented almost four of every ten students enrolled in southern postsecondary educational institutions. Table 10, from Marks' publication entitled, *Higher Education Enrollment, 1982: Trends in the Nation and the South* (1984), indicates that increases in black enrollment have been attributed to part-time students.

TABLE 10

Black Headcount Enrollment of Part-Time And Full-Time Students, Fall 1982; Percent Change 1980-1982 and 1976-1982; Percent of Enrollment Black, 1982 United States and SREB States

	Black Headcount Enrollment 1982	Percent Change 1980-1982	Change 1976-1982	Percent Of Enrollment Black 1982
United States	1,103,517	-0.4	6.7	8.8
Full-Time	667,428	-2.7	1.2	8.1
Part-Time	436,089	3.3	16.3	8.3
SREB States	462,195	0.2	8.6-	14.0
Full-Time	313,954	-2.5	1.6	15.5
Part-Time	148,241	6.6	27.2	11.6

Source: Southern Regional Education Board, 1982.

In 1978, a total of 87.016 black undergraduate students were enrolled as part-time students at public four-year insittutions, compared to 224,490 at public two-year colleges (Mingle, 1980).

In 1970, Blacks and Whites graduated from secondary schools at rates of 65 and 83 percent respectively. However, by 1974, the black/white graduation rate was 72 percent for blacks and 85 percent for whites. In addition, in 1970, approximately 15 percent of the Blacks between

the ages of 17-24 were attending college, compared with 27 percent of whites in the same age category (National Center for Education Statistics, 1978). In addition, Morris (1981) contends that since 1976, black enrollment at the undergraduate level no longer increases although the enrollment of all other minorities except Native Americans continues to increase.

According to Hill (1984), during the 1976 spring term, a total of 1,233,000 Blacks were enrolled in college, with 1,080,000 enrolled at the undergraduate level. Blacks, ages 18-24, had lower college enrollment rates than all other high school graduates. Further, Hill states that almost 22 percent of all blacks, ages 16 and above, enrolled in postsecondary institutions in spring 1976, were enrolled in adult education centers, vocational centers, CETA or correspondence courses, commonly termed "noncollegiate institutions." Blacks composed 12 percent of the total enrollment in non-collegiate institutions, a percentage much greater than their 10 percent proportion of the total population. Available data also indicate that even in secondary schools, black students are "under-represented in academic programs and over-represented in vocational education programs," may of which lead to low-status occupations (Chronicle of Higher Education, April 17, 1985).

In 1952, the majority of all college black students were enrolled full-time, primarily at residential institutions. However, in the South, by 1978, full-time enrollment among Blacks had declined by 8.2 percent in total head count and part-time enrollment was up nearly 27 percent, a gain of 6 percent in total head count. Nationally, two-year institutions enrolled 42 percent of all black post-secondary students, compared to 34 percent of the whites. In the south, 23 percent of all white students in higher education were attending community colleges, compared to 37 percent of all Blacks (Mingle, 1980).

Data collected by the U.S. Department of Education and reported in the Chronicle of Higher Education, (July 23, 1986), show that in 1984, while 35.1 percent of all students were enrolled in public two-year colleges, 39 percent of the black students attended public two-year colleges. Black students were least represented in two-year private colleges, with only 3.7 percent in attendance. Griggs (1980) states that a study conducted by Howard University researchers—Institute for the Study of Education Policy—(ISEP) 1976, found that in 1973, Blacks were "disproportionately represented in two-year and junior colleges and in less prestigious four-year colleges." In Florida, Griggs reports that between 1970-7[illegible], the proportion of Blacks in community colleges increased 7 percent while the percentage of whites in Florida colleges decreased 3 percent. In 1977, a total of 78 percent of the black high school graduates who attended college in Florida enrolled at a community college.

Community colleges offered many benefits. They offered Blacks who could not afford to matriculate to a four-year institution the oppportunity to remain fully employed, while concurrently attending college, usually as a part-time student at night. Furthermore, nontraditional students, those who had been out of school for several years, accounted for much of the increase in part-time enrollment in the community colleges. Tuition was also more affordable at the community colleges. Blacks who simply wanted to take one or two courses found it convenient and more economically advantageous to enroll in community colleges. The selective admissions standards of four-year colleges, especially in a two-tiered system such as exists in Florida, limits student enrollment at the freshman and sophomore levels and thereby forces many students who want to attend a four-year institution to begin their studies at a community college.

Students' avocational interests are beginning to shift from those previously held in high esteem, such as education and the arts and sciences, to occupational and technical areas. This shift, in part, may be attributed to current employment trends. The lowest employment rates for Blacks are in health occupations and physical sciences. Blacks, to a great degree, are concentrating their studies in these areas: education, humanities, and the social sciences. In all three areas, unemployment is high and salaries are low (*Chronicle of Higher Education*, April 17, 1985). Again, the comprehensive mission of the community colleges, "being all things to all people," enabled students to enroll in one or several courses to pursue associate-level academic or occupational offerings, or courses at the certificate level. In short, students are finding that their short-term goals may be attained more easily if they enroll in community colleges.

Black enrollment patterns demand a look at the sex of students. Nationally, black male enrollment in postsecondary institutions continues to decrease. Marks (1984) confirms the notion that the majority of students enrolled in higher education since the fall of 1980 have been women. Historically, he notes, black women have "constituted a majority of black enrollment." Also, in terms of graduation rates of Blacks between 1976 and 1981, the number of degrees at every level declined for black males, while the degrees awarded to black females increased at all except the master's level. Table 11, from Susan Hill's article entitled, "Participation of Black Students in Higher Education: A Statistical Profile from 1970-71 to 1980-81," presents the number and type of degrees awarded to Blacks in 1976 and 1981.

TABLE 11

Degree Awarded to Blacks, by level:
1976 and 1981

Degree level	1976		1981	
	Awards to Blacks	Blacks as a percent of all recipients	Awards to Blacks	Blacks as a percent of all recipients
Total	83,400	8.3	82,000	6.2
Bachelor's	59,100	6.4	60,700	6.5
Master's	20,300	6.6	17,100	5.8
Doctor's	1,200	3.6	1,300	3.9
First-Professional	2,700	4.3	2,900	4.1

Source: Integrated Education, Jan./June, 1984, p. 53-60.

Table 12 also from Hill, presents the percentage change from 1976 to 1981.

TABLE 12

Percent change in degrees awarded to
Blacks and Whites, by degree level and sex:
1976 to 1981

Degree Level	Blacks		Whites	
	1976	1981	Percent Change 1976 to 1981	Percent Change 1976 to 1981
Bachelor's				
Men	25,600	24,500	-4	-9
Women	33,500	36,200	+8	+9
Master's				
Men	7,800	6,200	-21	-17
Women	12,500	11,000	-12	+1
Doctor's				
Men	800	700	-10	-17
Women	400	600	+29	+31
First-professional				
Men	2,000	1,800	-12	*
Women	700	1,200	+71	+99

* Less than 0.5 percent.

Source: Integrated Education, Jan./June, 1984, pp. 53-60.

Fleming (1984) contends that on integrated campuses, it is the black male who experiences the greatest number of interpersonal conflicts and who suffers most as a result of the interracial educational environment. Black female students, on the other hand, experience feelings of incompetence and dissatisfaction with their performance. Female students also had the tendency to experience more anxiety during competitive situations, and they usually set goals considerably lower than those of black men.

Hill (1984) indicates that women account for 53 percent of the total black noncollegiate enrollment and women also comprise a large proportion of black part-time students who attend noncollegiate institutions. Overall, however, black students are more likely than whites to enroll in special education programs and less likely to enroll in accelerated programs, such as those for talented and gifted students. In both college and secondary schools, black students usually enroll in courses and programs that differ in kind and content from those of white students. Such programs are usually less challenging and less likely to stimulate or develop higher-order cognitive skills and abilities (*Chronicle of Higher Education*, April 17, 1985).

Another article in the *Chronicle of Higher Education* (January 8, 1986), urged state educators to begin new programs designed to insure the preparedness of black high school students for postsecondary education. The call for new programs was made after a Southern Regional Education Board report revealed that the increase in black student enrollment between 1976 and 1982 was only 6.1 percent. This was a marked decline from the 24.6 percent increase in black student enrollment from 1966 to 1976.

Even as early as 1978, the Institute for the Study of Education Policy had indicated that for affirmative action programs to work, Blacks had to remain in school and major in a wide range of academic disciplines. The Institutes stressed the importance of black faculty at predominantly white institutions, and urged the continuation

of special minority admission programs, as well as the provision of adequate financial aid for minority students.

With more and more women over 30 attending college, institutions have been forced to shift the focus of their recruitment activities, as well as the types of supportive services offered. It is important, however, to note that the numerous special programs for minorities which were instituted during the late sixties and early seventies have dwindled. In 1976 only about 38 percent of the colleges surveyed by Sedlacek and Webster indicated that they offered special programs for minorities, compared to 62 percent in 1974. A Southern Regional Education Board publication entitled *The College and Cultural Diversity* (October, 1971) details special services which predominantly white colleges in southern states were offering to assist in the recruitment of black students and their adjustment to college life. Emphasis now appears to be focused on assimilation. The same study found that in 1976, little emphasis appeared to have been placed on a student's high school grade point average or on the results of standardized tests, such as the SAT or ACT, in the admissions process for Blacks. In 1986, however, admission test results are beginning to play a greater role in the admissions process of all students. Further, test results, in many instances, are used as the sole criterion for placing students. In 1976, high school grade point average was considered by only 12 percent of the schools which admitted black to special programs, compared to 55 percent in 1969 (SREB, 1971).

According to Morris (1981), the majority of black students attending college have now shifted their enrollment from the traditionally black institutions to one of the approximately 3,000 traditionally white or newly majority-black institutions. In 1968, traditionally black institutions enrolled one-third of the approximately 434,000 black students in higher education. A decade later, slightly less than 17 percent of the one million black students were attending traditionally black institutions of higher learning.

So great has been the shift of black student enrollment from traditionally black institutions to predominantly white institutions, that some educators fear the demise of the black college, as well as drastic decreases in overall black enrollment. Marks (1985), states:

> Fewer black students will be enrolled in college in 1990 than today if present trends continue—and, black students will make up a smaller proportion of overall college enrollment. From the mid-1960s to the mid-1970s, the number of black students enrolling in colleges and universities rose dramatically. The relative proportion of black students in total enrollment reached record highs. In the late 1970s, however, the rates of increase in the enrollment of black students unexpectedly began to decline, and black students as a portion of total enrollment decreased. The result is that the 1980s are developing into a period of stable or declining numbers and proportions of black students in colleges and universities. (p.)

On the other hand, Hodgkinson (*Standard Education Almanac*, 1984-85) states that black enrollment in public schools is up and educators need to exhaust all revenues in making sure the largest possible number of minority students finish high school and become eligible for college. Hodgkinson warns that if significant numbers of black high school students do not graduate from high school or do not attend college, "the potential decline in the college cohort would not be 24 percent for the nation in 1990, but could be twice that."

In 1980, a total of 14.6 percent of the students attending college in the Southern Regional Education Board (SREB) states were black. In the SREB states (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and West Virginia), Blacks represented 18.7 percent of the total population in 1980 (Myers, 1982).

Results of a study conducted by the National Center for Education Statistics (1984-85) and referenced in the

Standard Education Almanac, show that college enrollment increased from 9.2 million in the fall of 1982 to 12.4 million in the fall of 1982. Chart 1, which follows, shows the differences in the enrollment rates of the white and nonwhite students, of different, age groups, enrollment by type of institution. Clearly, the enrollment growth rate was highest among Blacks and other races. In 1972, Blacks and other races constituted 10.4 percent of the total college enrollment, compared to 14.3 percent in 1982.

On overall minority enrollment at the postsecondary level, Sedlacek and Webster (1977) observe that public institutions have not been as successful as private institutions in recruiting or retaining students. Of the 4 or 5 percent of freshmen who enrolled in public institutions in 1975, only 2.5 percent returned the next year. However, of the 6 to 7 percent of black freshmen who enrolled in private institutions, approximately 6.3 percent returned the second year. Sedlacek acknowledges, though, that over the years private schools have generally attracted a greater percentage of black students than have public institutions. The private institutions which have been most successful in recruiting black students have emphasized academic programs. Least successful institutions have generally emphasized financial benefits to students.

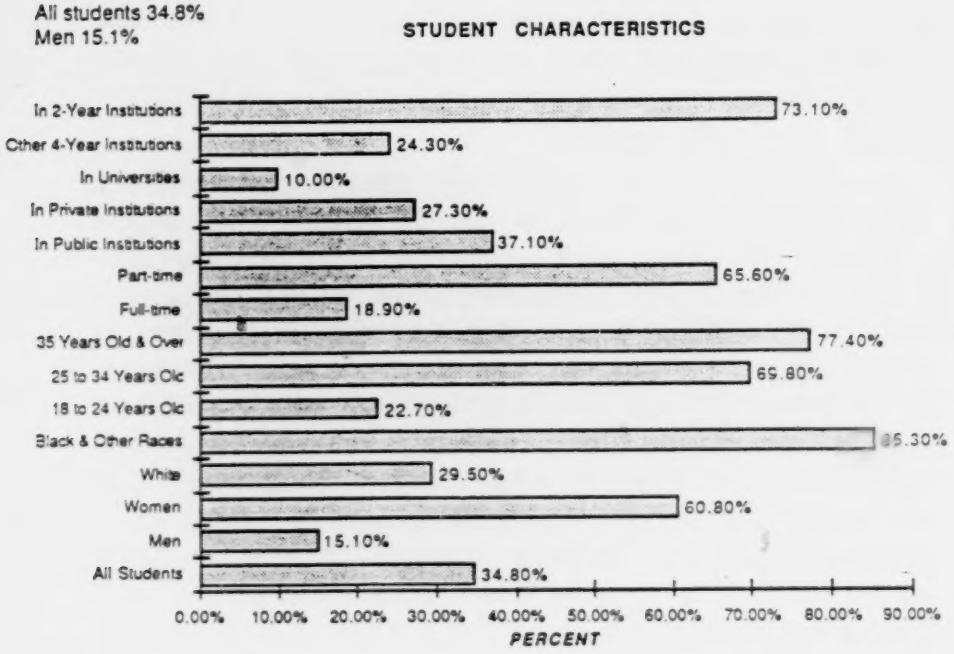
Data from the Higher Education Research Institute (1982) also indicate that white college students are more likely to complete the baccalaureate degree in the traditional four years than are black students. Hart (1984) confirms this fact and cites the results of a national longitudinal study. This study revealed that 34 percent of the white, 24 percent of the blacks, 18 percent of the American Indians, and 13 percent of the Hispanics who initially enrolled in undergraduate programs in 1972, earned the baccalaureate degree by 1976. After the traditional four-year period, the degree completion rate improved for both black and white students to 51 and 56 percent, respectively.

CHART 1

Percentage increases in the enrollment of college students with selected characteristics: United States, fall 1972 to fall 1982

Student Characteristics

All students 34.8%
Men 15.1%



Sources: Data by race and by age are derived from the current population surverys for the Bureau of Census, U.S. Department of Commerece. All of the other statistics are from the fall enrollment surveys of the National Center for Education Statistics, U.S. Department of Education.

The research study conducted by Charles M. Grigg (1980) reveals that in Florida, both the percentage and number of Blacks at all levels of postsecondary education has declined. Grigg's study also indicates that a larger proportion of white students earn associate of arts degrees and continue their studies at the state public universities than do black students and that a higher proportion of the white students who transfer to state universities complete their studies than do blacks.

Nationally, according to Claffey (1981) and Brazziel (1980), the traditionally black colleges and universities have been more successful than their white counterparts in helping students obtain the baccalaureate degree. Hart (1984), using what he terms an effectiveness quotient (EQ), identified the top ten postsecondary institutions in the country which produced the most baccalaureate degree recipients and the top five traditionally black institutions that produced the largest number of baccalureate degree recipients. Hart's list of colleges consistently placed in the top between 1972-73 and 1980-81, follows in Table 13.

TABLE 13

Top Ten Institutions in Effectiveness, 1972-73 to 1980-81

Institution	State	Years in Top 10
Simmons College*	MA	5
Harvard College	MA	5
Dartmouth College*	NH	5
Yale University*	CT	5
Rice University*	TX	4
East Texas State	TX	3
Southern University	LA	3
Connecticut College*	CT	3
Notre Dame University*	IN	3
Athens State College	AL	2

* Designates private institutions

PERSISTENCE RATE AND SUCCESS OF BLACK STUDENTS

As Chart 1 indicates, private, selective colleges and universities dominate among those institutions which Hart determined have been consistently effective in awarding black baccalaureate degrees.

Hart's list of most-effective traditionally black colleges from 1972-73 to 1980-81 contained five institutions: *Fisk University in Nashville,* Tennessee; South Carolina State University in Greensboro; Southern University in Baton Rouge, Louisiana; Tuskegee University in Tuskegee, Alabama; and Lane College in Jackson, Tennessee.

From his research, Hart (1984) concluded that traditionally black institutions "are generally more consistent performers in terms of institutional effectiveness in the production of black baccalaureates than traditionally white institutions (p. 5).

On the success of colleges in educating black students, several writers have praised the traditionally black institutions, especially given the fact that these colleges have historically admitted students who were underprepared. Therefore, these students would not have met the admissions standards at predominantly white colleges where the selection criteria are usually higher. Black colleges have also offered strong supportive services to enhance students' success (Miller, 1981; Blackwell, 1981). The strength of black colleges in *graduating black students is evident in the number of black professionals who are products of traditionally black* colleges.

Allen (1986) notes that black students on predominantly white campuses are not as successful as white students. In addition to having a higher attrition rate, black student enrollment in postgraduate programs is low, compared to the number of white pursuing postgraduate degrees. Further, black students on white campuses usually have lower grade-point averages and experience

more academic problems than do their white counterparts. Much of this lack of success may be linked to the black student's inability to adjust, inadequate academic background, alienation on campus, poor advisement, or even to the absence of black faculty to serve as role models. This, however, is not to imply that all black students in predominantly white institutions are unsuccessful and/or experience academic difficulties.

Austin (1981) asserts that, generally, black students attending traditionally black colleges have lower standardized test scores and are less prepared academically than are the typical black students on white campuses. In addition, many of the parents of black students who attend traditionally black institutions are employed in low-paying positions, have less money and have less formal education than do the parents of the typical black students who enroll in predominantly white institutions. Thus, the mission of traditionally black institutions is complex: They are expected to remediate these students' deficiencies and prepare them for employment, despite less adequate facilities and fewer financial resources (Miller, 1981; Williams 1981).

A study conducted in 1979 by the National Advisory Committee on Black Higher Education found that in 1977, among students 18 to 24, there were more dropouts than there were black college enrollees. Even in 1979, of the black students determined by their SAT scores to be among the most academically able, only 13 percent were enrolled in black institutions.

Further, Hart's results appear to indicate that private institutions are more effective than public institutions in the number of baccalaureate degrees awarded. Other factors which contribute to program effectiveness include: the existence of special admissions programs, the percentage of black faculty, the quality of the financial aid program, and the pupil-staff ratio.

Regarding persistence of black college students in obtaining the baccalaureate degree, Austin (1977) concluded that living in a dormitory during the freshman year is the most important environmental factor associated with college persistence. Other important factors that positively affect student persistence are involvement in campus activities and strong parental support. On the other hand, persistence is reduced by poor academic performance and by attendance at a two-year college.

At almost every level of education, the drop-out rate among black students is higher than among white students. For instance, in 1972, black students accounted for 10.5 percent of the high school graduates, but only 8.7 percent of the high school graduates, but only 6.5 percent of the baccalaureate degree recipients, and in 1979, only 4 percent of the doctorates and professional degrees were awarded to Blacks (April 17, 1985, *Chronicle of Higher Education*).

A study conducted by the Institute for Services to Education (1979) concluded that while black students at historically black colleges initially scored low on standardized tests, these students were capable of achieving their career and educational goals, despite their initial low scores. Hart (1984) quotes Miller and others (1977) who concluded that the primary factors which influence student enrollment are "geographic location, and the strength of the tutoring, counseling, and social, academic, and cultural programming services available to minority students." (p. 9)

Fleming (1984) states that black students who attend traditionally black institutions, though initially behind academically, overtime, achieve high academic gains and intellectual development. Also, in terms of psychosocial development, students on black campuses appear to be better adjusted, have positive self-images, take pride in themselves and in their race and also have aspirations (Allen, 1986).

Concerning the performance of black students, one study states that black students on black campuses achieve higher grade-point averages are actually enjoy college more than their peers who attend white colleges (*Report on Education Research*, July 2, 1986). Recommendations outlined to improve the academic success of black students on white campuses include more enrichment programs, better articulation between secondary schools and colleges, better orientation programs and more black faculty. In short, black students need to become acquainted with post-secondary education requirements while they are still in high school so that they can plan to pursue high school courses in an academic track leading to college preparation.

A study conducted by Gail Thomas (1984) analyzed students' early childhood, family, elementary and secondary school training and their educational goals, to determine why they had selected certain majors. The results of the study revealed that blacks make decisions about their majors long before they enter college. The majors which black students select are influenced by subjective factors. Thomas found that students' sex, vocational expectations and personal interests were the major factors which influenced their selection of a major field of study. Trent (1983) states that black females continue to select majors in education, the social sciences, and nursing. Hill (1984) reports that the number of Blacks receiving degrees in education and the percentage representation of Blacks in education declined between 1976 and 1981. Black representation, as a percent of all first-professional degree recipients increased in the following disciplines: theology, dentistry, podiatry, pharmacy and veterinary medicine. Persell (1977) asserts that Blacks and females have a tendency to enroll in large numbers in non-academic courses in high school. Therefore, they do not have the necessary prerequisites to pursue non-traditional college majors. Coleman and others (1981), state that high

school students who attend private schools have greater access to science and mathematics courses and generally are more prepared and more likely to pursue studies in these areas once they attend college.

According to Mednick and others (1975), Blacks and females are more prone to select majors which lead to careers in which they feel they will experience less racial or sexual discrimination.

Allen (1986) quotes Gurin and Epps (1975) who studied the difference in the college expectations of men and women and found:

- Women's goals were lower on all measures of educational and occupational aspirations.
- Males were three times more likely to plan to pursue the Ph.D. degree.
- Women were more likely to aspire to jobs in the "female sector" of the economy, jobs requiring less ability and effort while offering lower prestige.
- Males were more likely to be influenced in their goals and aspirations by the college attended (p. 23).

According to Allen, black men attending black colleges and white men attending white colleges are more likely to reap greater rewards from college than black women. Another study conducted by Allen and summarized in the *Report on Education Research* (July 12, 1986), found that Blacks attending predominately black colleges were more successful in attaining their educational goals than their counterparts who attended predominantly white colleges. This success rate, however, must be measured against the lower occupational levels Blacks in black colleges aim for, while Blacks attending white colleges aim for higher level, more prestigious occupational choices.

Sedlacek and Brooks (1976) reviewed predictor studies useful in ascertaining information on the success or lack

of success of black students in large universities. They concluded that seven major variables, all noncognitive, should be considered in predicting the success of minority students or in identifying problems encountered by minority students. These variables are: positive self concept, ability to understand and deal with racism, realistic self-appraisal, preference for long-range over short-term goals, successful leadership experience and demonstrated community service and the availability of a strong support person.

Hodgkinson's and other researchers' comments underscore the importance of articulation between secondary and postsecondary education officials. High school students need to know postsecondary education requirements while they are still in high school in order to pursue the appropriate track (academic vs. vocational or work experience), which leads to college admissions. A *Chronicle of Higher Education* article on the decline in enrollment of black students quoted on SREB survey which found that a higher percentage of white high school students pursue college preparatory programs than do Blacks. For example, 81 percent of the white high school seniors surveyed reported having taken one year of algebra and 50 percent reported having taken two years. Among black high school seniors, 68 percent had taken one year of algebra and 39 percent two years. The study concluded that there is "a persistent gap between the academic preparation and performance levels of black and white students."

A study concerning course offerings conducted by Linda Darling-Hammond and summarized in the *Chronicle of Higher Education* (April 17, 1985), revealed that in 1981, fewer college-bound students took courses in math, physical science, and social science. The math courses taken focused on general skills rather than specialized skills learned in geometry, algebra, or calculus.

The number of black students taking the SAT has declined since 1980. That decline could be responsible for the placement of black students in special remedial programs since many colleges are requiring a student score for regular admission; a certain percent of the students who fall below the cut-off may be granted a conditional admission, as in Florida. The conditional admission is based on other criteria in conjunction with the test score. The decline in the number of students taking the standardized tests appears to be linked to the decline in the number of black students who actually attend college. In 1980 there were 77,000 students who took the SAT. By 1985, however, the total had declined to 70,000.

While Blacks have gained greater access to traditionally white institutions within the last 25 years, Hart (1984) maintains that access is still a problem because of black underrepresentation in white institutions. Hart cites Blackwell (1981) who contends that there are three levels of access: "weak or limited, approximate, and equal access (p. 26)." Black access to traditionally white institutions, according to Blackwell, is negatively affected by several factors including the black unemployment rate, low income and occupational status, limited financial aid and hesitancy to borrow money to finance education.

COMMUNITY COLLEGES

This section of the study is devoted to the Community College System. The analysis summarizes and highlights each community college's enrollment and degrees awarded to the total population and to black students. The observation period consists of 1976 through 1985 and the academic years 1976-77 through 1984-85.

The primary data are presented in two tables in the following order for each community college:

1. The first table contains opening fall enrollment for the college's total population and for black students.

This table also contains the percentage of the total population that black students represent.

2. The second table contains the total degrees, associate in arts degrees and associate in science degrees awarded by the college to its total population and to its black students.

Secondary data are provided in Appendices A, B, C, and D. They are offered as an alternate form for studying the same data contained in the first and second tables for each community college. The data in the Appendices are presented in the following order for each community college:

- Figure 1 in Appendix A shows graphic enrollment data for the college's total population.
- Figure 2 in Appendix B shows graphic enrollment data for the college's black student population.
- Figure 3 in Appendix C shows graphic data for the total degrees, associate in arts degrees and associate in science degrees awarded by the college to its total student population.
- Figure 4 in Appendix D shows graphic data for the associate in arts degrees and associate in science degrees awarded by the college to its black student population.

BREVARD COMMUNITY COLLEGE

Table 14 indicates that over ten fall terms, except for 1978, the college's enrollment gradually increased through 1982. During the 1978 term, the enrollment declined 2 percent. This decline continued through 1979 when it rose to 6 percent. During the fall term of 1982, the col lege's enrollment declined. Then enrollment increased by 2 percent the next term. Enrollment declined 13 percent from 1983 through 1985.

The college's black enrollment was at its highest in 1977. The college's higher percentage of black students was 10 percent of the total enrollment for that term. In 1981, at the height of the college's overall enrollment, the number of black students enrolled declined. From 1981 to 1985 enrollments declined 28 percent. See Appendices A and B.

According to the data in Table 15, the college awarded more degrees in the 1981-82 academic year than in the 1980-81 academic year. The data also indicate a decline of 20 percent in 1982-83 from 1981-82. This decline continued through the academic year 1984-85. Total number of awards declined by 52 percent from 1981-82 through 1984-85.

The number of associate in arts degrees awarded appeared to parallel the overall total number of degrees awarded. However, the number of associate in science degrees awarded remained rather constant over the nine year observation period.

The data in Table 2 also indicate that the trend of degrees awarded to black students varied substantially from that of the total population. In 1978-79, the college awarded 50 associate in arts degrees to Blacks, the highest during the observation period. As the number of associate in arts degrees declined between the years 1978-79 through 1984-85, the number of associate in science degrees awarded increased in 1981-82, before declining each year through 1984-85.

The college awarded 747 associate in arts degrees in 1984-85. Of this number 15, or 2 percent, were awarded to black students. Of the 298 associate in science degrees awarded by the college, 15, or 3 percent, were awarded to black students.

* * * *

FLORIDA COMMUNITY COLLEGE SYSTEM

During the observation period 1976 through 1985, the system wide enrollment increased each year from 1976 through 1982. Enrollment declined slightly in 1983. It also declined again by four percent in 1984. In the 1985 fall term, most enrollments were also up over the 1984 fall term.

The enrollment of black students increased 10 percent in 1977 over 1976. Black enrollment declined by 30 percent through the 1984 fall, term followed by an increase in 1985 fall term. (See appendices A & B)

The number of associate in arts degrees awarded remained constant over the first six years. The number increased by 13 percent in 1981 82 over 1976-77, leveled off for the next two years and declined in 1984-85. The number of associate in science degrees awarded gradually increased during the observation period.

The number of associate in arts degrees awarded to black students increased 20 percent in 1977-78 over 1976-77. The number of awards declined over the next three years. By 1984-85, the total number of associate degrees awarded to black students declined 46 percent from the 1976-77 academic year. (See appendices C and D).

The number of Hispanic students enrolled in community college surpassed black students in 1981. (See table 71).

Miami-Dade Community College awarded 30 percent of the associate in arts degrees to Blacks during the observation period, and approximately 20 percent of all associate in arts degrees in the community college system (See appendix A).

COMMUNITY COLLEGE TRANSFER ENROLLMENT AND GRADUATION TRENDS IN THE UNIVERSITY SYSTEM 1976-77-1984-85

This section of the analysis focuses on the community college transfer students (Florida-resident classified students), entering the State University System from one of the 28 public community colleges in Florida. Specifically, these variables are analyzed: retention, attrition and graduation rate of community college transfer students and Black students during the observation period (academic years) 1976-77 through 1984-85).

An analysis for each academic year will be followed by a table showing the number of community college transfer students by race. Each table tracks the community college transfer student and shows the retention, attrition, and year-end graduation rate.

The data are presented in tables in the following order for each year of the observation period.

1. Table 7, refiects the numbers of community college transfer students enrolled in predominantly white institutions and Florida Agricultural and Mechanical University from 1976-77 through 1984-85.
2. Breakouts for the period 1976-77 through 1980-81 for community college transfer students graduating after six years.
3. One table for the period 1981-82 for community college transfer students graduating after five years.
4. One table for the period 1982-83 for community college transfer students graduating after four years.
5. One table for the period 1983-84 for community college transfer students graduating after three years.
6. One table for the period 1984-85 for community college transfer students graduating after two years.

The overall community college transfer student enrollment to the SUS (Florida-resident classified students) declined by 15.1 percent during the observation period.

Hispanic community college transfer student enrollment declined in 1984-85 by five percent; however, overall enrollment in this category increased during the observation period by 30.4 percent. Hispanics surpassed Blacks as the largest minority of community college transfer students entering the SUS in 1981.

White community college transfer student enrollment also declined in 1984-85 by four percent. For the total observation period, such enrollment declined by 17 percent.

Black community college transfer student enrollment declined by six percent from 1983-84 to 1984-85. Black community college transfer student enrollment declined by 37.8 percent during the observation period. The largest decline in black community college transfer students occurred during academic years 1978-79 (14.4 percent), 1980-81 (10.3 percent) and 1981-82 (11.5 percent).

Black community college transfer students who enrolled at Florida Agricultural and Mechanical University (FAMU) represented approximately 11 percent of all black comunity college transfer students in the SUS Community college transfer students were not disproportionately enrolled at FAMU.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1976-77

During the academic year 1976-77, there were 16,125 community college transfer students (Florida-resident classified students) who entered the SUS (Table 72). At the end of the year, 99.4 percent of the community college transfer students who entered in 1976-77 were still enrolled; 0.61 percent had graduated. By the end of the second year, 62.8 percent were still enrolled; 17.5 percent

had graduated; and 19.7 percent had dropped out (attrition) for various reasons. This attrition rate increased to a high of 38.3 percent by the end of the sixth year. White community college transfer students showed the lowest attrition rates from 19.7 percent at the end of the second year to a high of 37.1 percent at the end of the sixth year.

More Hispanic community college transfer students persisted longer than any other minority group. Whites and non-Hispanic minorities seem to graduate faster than both Hispanics and blacks. Hispanics and Blacks graduated fewer than 50 percent of their respective groups at the end of six years. However, 74.4 percent of the 9,135 community college transfer students who graduated by the six year mark, did so by the end of the third year. Approximately 75.3 percent of the White community college transfer students who graduated within six years did so by the end of the third year. Blacks followed with 68.6; Hispanics with 65 percent.

Black community college transfer students had the highest attrition rate and the lowest graduation rate among community college transfer students.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1977-78

The number of community college transfer students entering the SUS during the academic year 1977-78 declined by two percent from 1976-77. At the end of the first year, 99.8 percent of the community college transfer students were still enrolled in the SUS, with 0.21 percent graduating. At the end of the second year 63.2 percent were still enrolled. 15.5 percent had graduated and 21.2 percent had dropped out (attrition) for various reasons. This attrition rate increased to a high of 38.3 percent at the end of the sixth year; a rate identical with with

that of the community college transfer students who entered the SUS in 1976-77.

White community college transfer students had the lowest attrition rate (37.1 percent) and the highest graduation rate (57.7 percent) after six years. Hispanics continued to persist longer with the larger percentage still enrolled at the end of each year. Hispanics had the lowest attrition rate for the first three years (28.9 percent); and the second highest graduation rate (39.9 percent), at the end of the six year period. Black community college transfer students had the highest attrition rate (48.6 percent) and the lowest graduation rate (45.1 per cent). Blacks were the only group of community college transfer students who had less than a 50 percent graduation rate.

In 1977-78, there were 15,803 community college transfer students entering the SUS, and 8,867 or 56.1 percent graduated by the end of the sixth year. However, 72.3 percent of the 8,867 who graduated, did so by the end of the third year. Seventy-two (72) percent of whites, 72 percent of Blacks, 70 percent of Hispanics, and 67 percent of other minorities had graduated by the end of the third year.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1978-79

Community college transfer student enrollment declined by 10.3 percent during the 1978-79 academic year. At the end of the first year, 99.7 percent of the community college transfer students were still enrolled in the SUS, and 0.33 percent had graduated. By the end of the second year, 63.2 percent of the community college transfer students were still enrolled, 15.1 percent had graduated, and 21 percent had dropped out. Of the 14,136 who entered the SUS, 56.3 percent or 7,979 had graduated at

the end of six years. By the end of the third year, 72.4 percent of 5,780 had graduated.

At the end of six years, while community college transfer students had the highest graduation rate (57.5 percent) and the lowest attrition rate (36.8 percent).

Hispanic commmunity college transfer student graduation rate was 51.5 percent. Their attrition rate was 41.7 percent at the end of six years. A tthe end of three years, 66.9 percenut of the Hispanics had graduated; however, they had the second highest percentage of students still enrolled at the end of six years.

For the first time, other minorities had the second highest graduation rate, 53.6 percent, and the second lowest attrition rate, 40.1 percent, at the end of the six year period. However, at the end of the three years, they had the lowest graduation rate, 64.9 percent.

Black community college transfer students had the lowest graduation rate, 47.7 percent, of all transfer students and the highest attrition rate, 44.9 percent, at the end of six years.

Blacks did, however, have the highest graduation rate, 72.4 percent at the end of three years, as well as the highest percentage 7.4 percent, of students still enrolled. Black community college transfer students were the only group to have less than 50 percent of their students graduating at the end of the six years.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1979-80

In the 1979-80 academic year, 13,744 community college transfer students (Florida-resident classified students) entered the SUS. This number represented the third consecutive year of decline in community college transfer student enrollment. By the end of the first year, 99.7 percent of the community college transfer students

who entered in 1979-80 were still enrolled and 0.28 percent had graduated. At the end of the second year, 66.2 percent of the community college transfer students were still enrolled, 14.2 percent had graduated and 19.6 percent had dropped out (attrition) for various reasons. The attrition rate increased to a high of 37.8 percent at the end of six years. White community college transfer students had the lowest attrition rate (36.4 percent) at the end of six years, followed by other minorities (37.7 percent), Hispanics (39.7 percent) and Blacks (50.6 percent) with the highest attrition rate.

Hispanic community college transfer students persisted longer and had a larger percentage of students still enrolled at the end of each year. There were 107 more black commuity college transfer students than hispanic community college transfer students, but 51 more Hispanics graduated than Blacks. The white community college students graduation rate at the end of six years was 58.1 percent; other minorities, 54.5 percent; Hispanics, 52.1 percent; and Blacks 42.1 percent.

Most of the community college transfer students (66 percent) graduated by the end of their third year. Approximately 67 percent of the white community college transfer students graduated within three years, followed by 63 percent of blacks, 60 percent of Hispanics and 61 percent of other minorities.

Black community college transfer students continue to have the highest attrition rate and the lowest graduation rate of all groups.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1980-81

Community college transfer students (Florida-resident classified students) entered the SUS during the 1980-80 academic year in higher numbers for the first time in four years: from 13,744 students to 13,914, or 1.2 percent. See Table 76. At the end of the first year, 99.8

RETENTION,ATTRITION AND GRADUATION RATE OF COMMUNITY COLLEGE STUDENTS ENTERING THE STATE UNIVERSITY SYSTEM DURING ACEDEMIC YEAR 1976-77
FLORIDA-RESIDENT-CLASSIFIED STUDENTS

TABLE 72

RACE	TOTAL NUMBER ENTERING S U S	END OF 1 ST YEAR			END OF 2 ND YEAR			END OF 3 RD YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	13,418	13,333 (99.4)	0	85 (.63)	8,293 (61.8)	2,627 (19.7)	2,498 (18.6)	3,487 (26)	4,045 (30.1)	5,886 (43.9)
BLACK	1,242	1,238 (99.7)	0	4 (.32)	830 (66.8)	264 (21.3)	148 (11.9)	418 (33.7)	422 (33.9)	402 (32.4)
HISPANIC	1,058	1,058 (100)	0	0	756 (71.5)	205 (19.3)	97 (9.2)	398 (37.6)	325 (30.)	335 (31.7)
OTHER	407	399 (98.03)	0	8 (1.96)	240 (59.)	87 (21.3)	80 (19.7)	106 (26)	128 (31.4)	173 (42.5)
TOTAL	16,125	16,028 (99.4)	0	97 (.61)	10,119 (62.8)	3,183 (19.7)	2,823 (17.5)	4,409 (27.3)	4,920 (30.5)	6,796 (42.1)

RACE	TOTAL NUMBER ENTERING S U S	END OF 4 TH YEAR			END OF 5 TH YEAR			END OF 6 TH YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	13,418	1,663 (12.4)	4,637 (34.5)	7,118 (53)	965 (7.2)	4,843 (.36)	7,610 (56.7)	621 (4.6)	4,985 (37.1)	7,812 (58.2)
BLACK	1,242	202 (16.3)	523 (42.1)	517 (41.6)	110 (8.9)	565 (45.4)	567 (45.7)	69 (5.6)	587 (47.2)	586 (47.3)
HISPANIC	1,058	207 (19.5)	410 (38.7)	441 (41.7)	115 (10.9)	451 (42.6)	492 (46.5)	88 (8.3)	455 (43.)	515 (48.7)
OTHER	407	47 (11.5)	151 (37.1)	209 (51.4)	26 (6.4)	163 (40.)	218 (53.6)	23 (5.7)	164 (40.2)	220 (54)
TOTAL	16,125	2,119 (13.1)	5721 (35.4)	8,285 (51.4)	1,216 (7.5)	6,022 (37.3)	8,887 (55.1)	801 (4.9)	6191 (38.3)	9,135 (56.6)

RETENTION, ATTRITION AND GRADUATION RATE OF COMMUNITY COLLEGE STUDENTS ENTERING THE STATE UNIVERSITY SYSTEM DURING ACEDEMIC YEAR 1977-78
FLORIDA-RESIDENT-CLASSIFIED STUDENTS

TABLE 73

RACE	TOTAL NUMBER ENTERING S.U.S.	END OF 1 ST YEAR			END OF 2 ND YEAR			END OF 3 RD YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	13,086	13,057 (99.8)	0	29	8,161 (62.4)	2,800 (21.3)	2,125 (16.2)	3,588 (27.4)	4,029 (30.7)	5,469 (41.8)
BLACK	1,234	1,233 (99.9)	0	1	808 (65.5)	273 (22.1)	153 (12.4)	406 (32.9)	424 (34)	404 (32.7)
HISPANIC	1,114	1,114	0	0	779 (69.9)	210 (18.8)	125 (11.2)	385 (34.6)	322 (28.9)	407 (36.5)
OTHER	369	365 (98.9)	0	4	240 (65)	81 (21.9)	48 (13)	115 (31.2)	126 (34.1)	128 (34.7)
TOTAL	15,803	15,769 (99.8)	0	34	9,988 (63.2)	3,364 (21.2)	2,451 (15.5)	4,494 (28.4)	4,901 (31)	6,408 (40.5)
RACE	TOTAL NUMBER ENTERING S.U.S.	END OF 4 TH YEAR			END OF 5 TH YEAR			END OF 6 TH YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	13,086	1,714 (13.1)	4,585 (35)	6,787 (51.9)	1,013 (7.7)	4,812 (36.7)	7,259 (55.5)	679 (5.2)	4,862 (37.1)	7,544 (57.7)
BLACK	1,234	206 (16.7)	537 (43.5)	491 (39.8)	116 (9.4)	580 (47)	538 (43.6)	77 (6.2)	600 (48.6)	557 (45.1)
HISPANIC	1,114	218 (19.6)	395 (35.4)	501 (45)	130 (11.7)	438 (39.3)	546 (49)	93 (8.3)	446 (39.9)	576 (51.7)
OTHER	369	57 (15.4)	139 (37.6)	173 (46.9)	30 (8.1)	156 (42.2)	183 (49.6)	21 (5.7)	158 (42.8)	190 (51.5)
TOTAL	15,803	2,195 (13.9)	5,656 (35.7)	7,952 (50.3)	1,289 (8.2)	5,986 (37.8)	8,526 (54)	870 (5.5)	6,066 (38.3)	8,867 (56.1)

percent were still enrolled and 0.21 percent had graduated. By the end of the second year, 68.9 percent were still enrolled; 11 percent graduated; and 20.1 percent dropped out (attrition). This attrition rate increased 37.5 percent by the end of the sixth year.

Hispanic community college transfer students had the lowest attrition rate after six years, 29.9 percent, and became the largest minority community college transfer student group in the SUS. Hispanics continued to persist longer and had a larger percentage of students still enrolled at the end of each year. Of the 550 Hispanics who graduated at the end of six years, 58.9 percent did so in three years.

White community college transfer students had the largest graduation rate (57.4 percent) for the year. However, 65.8 percent graduated by the end of their third year. Other minorities (excluding Hispanics), seem to keep the graduation, attrition, and retention pace with the white community college transfer students.

Black community college transfer students had the highest attrition rate (49.5 percent) after six years. Blacks were surpassed by Hispanics as the larger minority group transferring to the SUS.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1981-82

Community college transfer students (Florida-resident classified students) entering the SUS in 1981-82, declined in number from 13,914 students in 1980-81 to 13,392, or 3.7 percent, in 1981-82. See Table 77. Enrollment for white community college transfer students declined by 3.7 percent; Blacks, 11.5 percent; and Hispanics, 1.5 percent. Enrollment increased for other minorities by 10 percent in 1981-82.

At the end of the first year, 99.7 percent of the community college transfer students were still enrolled, and

0.02 percent had graduated. By the end of the second year, 70.6 percent were still enrolled, 10.5 percent had graduated and 18.8 percent had dropped out (attrition) for various reasons. This attrition rate increased to a high of 35.9 percent at the end of five years.

White community college transfer student attrition increased from 18.8 percent at the end of the second year, to 35 percent at the end of five years. For the first time, white community college transfer students did not have the lowest attrition rate or the highest graduation rate among transfer students entering the SUS. Other minorities (American Indians, Asians, etc.) had the lowest attrition rate, 31.8 percent, and the highest graduation rate, 59 percent. Blacks continued to have the highest attrition rate, 47.7 percent, at the end of five years, and the lowest graduation rate, 41.2 percent, at the end of five years. Hispanics seem to persist longer and had a higher percentage of students still enrolled at the end of each of the five years.

At the end of the five years 7,186, or 53.6 percent, of the 13,396 community college transfer students entering the SUS in 1981-82 had graduated, with 66.2 percent graduating by the end of the third year. White community college transfer students had the highest graduation rate at the end of three years, 67.6 percent, followed by Blacks, 59.2 percent; Hispanics, 58.5 percent; and other minorities, 56.3 percent.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1982-83

Community college transfer student (Florida-resident classified students) enrollment increased by 8.5 percent, or 1,244 students, in the 1982-83 academic year over 1981-82. See Table 78. Hispanic community college

transfer students accounted for 44.2 percent or 550 students of this increased enrollment. At the end of the first year, 99.9 percent of the community college transfer students were still enrolled and .06 percent had graduated. By the end of the second year, 72.9 percent of the community college transfer students were still enrolled, 9.6 percent had graduated and 17.5 percent had dropped out (attrition). The attrition rate increased from a low of 17.5 percent at the end of the second year, to a high of 33 percent at the end of the fourth year. Data for community college transfer students entering the SUS in 1982-83 was available for only four years.

White community college transfer enrollment increased by 4.5 percent in 1982-83 over the previous year. At the end of four years, white students had the lowest attrition rate, 32.5 percent, followed by Hispanics, 32.6 percent; other minorities, 33.7 percent; and Blacks 40.9 percent.

Hispanic community college transfer students continued to persist longer with a larger percentage still enrolled at the end of each year. By the end of the third year, 50.7 percent of the Hispanics were still enrolled, followed by Blacks, 43.2 percent; other minorities, 39.9 percent; and Whites, 36.7 percent. At the end of the fourth year, Hispanics had 30.1 percent still enrolled, Blacks 22.3 percent, other minorities, 20.2 percent; and Whites 18.2 percent. The Hispanic enrollment increased by 34.2 percent or 550 students in 1982-83 over the 1981-82 enrollment.

Black community college transfer student enrollment increased only 0.5 percent in 1982-83 over the previous year. Blacks, after four years, had the lowest graduation rate, 36.8 percent, and by the highest attrition rate, 40.9 percent.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1983-84

Community college transfer student enrollment declined from 14,640 students in 1982-83 to 14,473 (1.2 percent) in 1983-84. See Table 79. White community college transfer student enrollment declined by four percent; Blacks, by 2.6 percent; Hispanics, 0.81 percent; and other minorities, 17.2 percent.

At the end of the first year, 99.9 percent of the community college transfer students who entered the SUS in 1983-84 were still enrolled and 0.04 percent had graduated. By the end of the second year, 72 percent were still enrolled, 8.9 percent had graduated, and 19.1 percent had dropped out. The attrition rate increased to 28.6 percent at the end of the third year.

Hispanic community college transfer students had the lowest attrition rate for two of the three years 16.3 percent and 26.3 percent). Other minorities (17.8 percent and 27.2 percent); Whites (19.3 percent and 28.3 percent); and Blacks (22.9 percent and 37.7 percent). Hispanics persisted longer and had a higher percentage of students still enrolled at the end of the second and third years.

White community college transfer students had the highest graduation rate, 35.5 percent. Blacks had the highest attrition rate, 37.7 percent, and the lowest graduation rate, 22.8 percent.

COMMUNITY COLLEGE TRANSFER STUDENTS ENTERING THE SUS IN 1984-85

Enrollment of community college transfer students (Florida resident classified students) to the SUS declined 6 percent from 14,466 in 1983-84 to 13,686 in 1984-85 (see Table 80). White community college trans-

fer student enrollment declined by 4 percent, followed by Blacks, 6 percent; hispanics, 5 percent; and other minorities, 37 percent.

By the end of the first year, 99.9 percent of the community college transfer students were still enrolled and 0.05 percent had graduated. At the end of the second year, 71.6 percent of the community college transfer students were still enrolled, 9.4 percent had graduated, and 19 percent had dropped out (attrition). At the end of the second year, 71 percent of the whites were still enrolled; Blacks, 67.9 percent; Hispanics, 76.7 percent; and other minorities 73.2 percent.

The attrition rate was 19 percent for all groups at the end of the second year; whites, 18.5 percent; blacks 27.6 percent; Hispanics, 18.2 percent; and other minorities, 18.3 percent.

White community college transfer students had the highest graduation rate and Blacks the lowest graduation rate and highest attrition rate.

RETENTION,ATTRITION AND GRADUATION RATE OF COMMUNITY COLLEGE STUDENTS ENTERING THE STATE UNIVERSITY SYSTEM DURING ACEDEMIC YEAR 1978-79

FLORIDA-RESIDENT-CLASSIFIED STUDENTS

TABLE 74

RACE	TOTAL NUMBER ENTERING S.U.S.	END OF 1 ST YEAR			END OF 2 ND YEAR			END OF 3 RD YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	11,763	11,721 (99.6)	0	42 (.35)	7,433 (63.2)	2,473 (21)	1,857 (15.8)	3,271 (27.8)	3,548 (30.2)	4,944 (42)
BLACK	1,056	1,054 (99.8)	0	2 (.18)	697 (65)	232 (21.9)	127 (12.02)	327 (31)	364 (34.4)	365 (34.6)
HISPANIC	950	950	0	0	649 (68.3)	192 (20.2)	109 (11.5)	337 (35.5)	286 (30.1)	327 (34.4)
OTHER	414	411 (99.3)	0	3 (.72)	273 (65.9)	95 (22.9)	46 (11.1)	133 (32.1)	137 (33)	144 (34.8)
TOTAL	14,183	14,136 (99.7)	0	47 (.33)	9,052 (63.8)	2,992 (21)	2,139 (15.1)	4,068 (28.7)	4,335 (30.5)	5,780 (40.8)

RACE	TOTAL NUMBER ENTERING S.U.S.	END OF 4 TH YEAR			END OF 5 TH YEAR			END OF 6 TH YEAR		
		RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED	RETENTION ENROLLED	ATTRITION	GRADUATED
WHITE	11,763	1,587 (13.5)	4,111 (34.9)	6,065 (51.6)	949 (8.06)	4272 (36.3)	6,542 (55.6)	672 (5.7)	4,326 (36.8)	6,764 (57.5)
BLACK	1,056	157 (14.9)	446 (42.2)	453 (43)	98 (9.3)	468 (44.3)	490 (46.4)*	78 (7.4)	474 (44.9)	504 (47.7)
HISPANIC	950	190 (20)	341 (35.9)	419 (44.1)	112 (11.8)	379 (39.9)	459 (48.3)	65 (6.8)	396 (41.7)	489 (51.5)
OTHER	414	57 (13.8)	160 (38.6)	197 (47.6)	46 (11.1)	158 (38.2)	210 (50.7)	26 (6.3)	166 (40.1)	222 (53.6)
TOTAL	14,183	1,991 (14.03)	5,058 (35.7)	7,134 (50.3)	1,205 (8.5)	5,277 (37.2)	7,701 (54.3)	841 (5.9)	5,362 (37.8)	7,979 (56.3)

FINDINGS AND RECOMMENDATIONS

The purpose of this study was to present a comprehensive chronology of black student enrollment in public community colleges and public universities. Further, it was to present a comparison of the graduation rates of various ethnic groups which transferred from community colleges to public universities. To conceptualize the study, empirical data were obtained from the following primary sources in Florida; the Board of Regents, the State Board of Community Colleges and the Postsecondary Education Planning Commission. Data also were obtained from the following secondary sources community colleges, Southern Region Education Board and a variety of printed materials.

The importance of the foregoing purpose is to present a comprehensive representation of the enrollment and graduation trends of community college black students. It is also important to show the transfer, retention, and graduation trend of black students with associate in art degrees who enter public universities.

The period under consideration was a 9-year period covering the fall terms and academic years 1976-77 through 1984-85. This period is pivotal in Florida's history because of the number of educational reform policies implemented during the period under consideration.

FINDINGS

The analysis of the data revealed the following:

- Black student enrollment declined from the 1976 fall term in 21 of the 28 community colleges.
- Black students graduated from community colleges at a rate lower than their counterparts.
- The number of students transferring from community colleges into public universities declined from 1976 through 1985.

- Public universities retained other transfer students in greater number than they retained black students.
- One-half or fewer of the black transferees from the community colleges were graduated.
- The largest decline in the number of community college graduates occurred between the academic years 1983-84 and 1984-85.
- Hispanic students surpassed black students as the largest minority group of community college transferees in public universities from academic years 1980-81 through 1984-85.
- The group with the lowest graduation rate from public universities six years after transferring from community colleges was black students.
- The enrollment of black students declined over the nine year observation period at a much higher rate than that of minority students generally.

Recommendations

The analysis of data and review of the related literature suggest these recommendations:

1. Community colleges should examine their overall recruitment procedures.
2. Community colleges should determine the effectiveness of their recruitment procedures for attracting black students.
3. Community colleges should identify the causative factors in the high rate of attrition among black students.
4. Community colleges should examine critically their methods of preparing black students to master graduation requirements.

5. Community colleges should examine the reasons for the decline in the number of black students with associate in arts degrees transferring into the state university system.
6. Public universities should examine their procedures for recruiting black students with associate in arts degrees.
7. Public universities should examine the causes of the high attrition among black transferees.
8. Public universities should examine their methods of preparing black community college transferees for graduation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3095-70

KENNETH ADAMS, *et al.*,
Plaintiffs

v.

F. DAVID MATHEWS,
Individually, and as Secretary of the Department of Health, Education and Welfare, *et al.*,
Defendants

EXCERPTS FROM AMICUS CURIAE BRIEF FILED BY NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER EDUCATION

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* * * *

II

THE FURTHER RELIEF REQUEST SHOULD BE DENIED

What emerges from the grounds of this suit, as well as the relief requested, is that as to Higher Education, the maintenance of the Black Colleges and the larger University within a particular state is the maintenance of a dual system of education based upon race; therefore, the state is discriminating and engaging in conduct forbidden by the Fourteenth Amendment. It follows then, that the states must establish a unitary system—one system. To accomplish this, the Plaintiffs advocate that the Black institutions must be assimilated into the white unitary system where there is presumptively equal edu-

cational opportunity. To allow this assimilation would be independent of, and contrary to, the State's objective to maintaian "special purpose" institutions of Higher Education.

The opportunity of an education means nothing if it does not mean the "equality of educational attainment." It is the position of the Black educators joining in this Amicus Brief that equal educational opportunity is not the goal, but that "equality of educational attainment" is the goal and the command of the Federal Constitution, and the intendment of the Civil War Amendments.

The Supreme Court in Brown, supra, at 493, stated:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of and education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

The Black institutions of Higher Education have served and continue to serve as the bridge between a crippling and debilitating elementary and secondary educational system, to which *Brown*, itself was directed because of the experience with the equal education cases from *Murray to Sweatt* in the field of higher education. This experience demonstrated that equality of educational attain-

ment could not be achieved until the feeder system of the secondary and elementary levels has been improved for Black students. It has been over twenty years since the Court decided *Brown*. At present, the general consensus is that this feeder system has not been improved and maybe has lost ground, (see footnote #5, Mr. Justice Douglas' concurring opinion in *Jones v. Mayer Co.*, 392 U.S. 409, 444-449 (1967). An Order to assimilate Black Institutions of Higher Learning would be analogous to removing a wooden beam to replace it with a steel or cement device, before the new beam is in place, thus leaving the structure entirely unsupported. There must be a transitory period in which remedial type activity must be instituted in order to rectify past inequality. This function must be supported by the respective states and the Federal government, for each share the Fourteenth Amendment duty to remove the "badges, incidents and vestiges" of slavery. Remedial type activity cannot cease until Black people have in fact equal educational opportunity and not mere theoretical illusory opportunity.

Whether the compensatory schemes presently invoked in a number of "white institutions" will meet constitutional attacks is highly doubtful. Whether energy and determination to pursue this activity will continue is likewise doubtful.

To opt for the one higher educational illusion and have the compensatory activity abandoned or proved ineffective because of the lack of expertise and understanding to achieve success, with the Black Institutions assimilated out of existence, would be tragic to the survival of Black people in a technological world.

Any activity by the Federal or state government to undermine the supportive role which these institutions presently perform is of itself discriminatory and contrary to the intendment of the Civil War Amendments. To remove the compensatory bridge which Blacks now have to

any hope of equality of educational attainment is violative of the constitutional guarantees.

The basis of the Plaintiffs' argument is that the state plans ad the individual schools are not reflective of HEW letters of criteria for compliance with the opinion of the Court of Appeals on desegregation in higher education. Of the various goals presented, as Plaintiffs cite in their Motion at page 17, was that directing the states to commit themselves to a 30% white enrollment at Black Institutions and substantial increases in Black enrollment at white institutions.

To support Higher Education blindly without recognition of the socio-economic disabilities imposed by society is in fact discrimination. Desegregating Black Institutions cannot be achieved by purely "racial imbalance" using the "salt and pepper" statistical approach. The issue is more complex. As the late President Lyndon B. Johnson emphasized at the Civil Rights Symposium at the dedication of the Lyndon Baines Johnson Library, in Austin, Texas, December, 1972:

> "(We) cannot obscure this blunt fact, the black problem remains what it has always been, the simple problem of being black in a white society. That is the problem to which our efforts have not yet been addressed. To be black in a white society is not to stand on level and equal ground. While the races may stand side by side, whites stand on history's mountain and blacks stand in history's hollow. Until we overcome unequal history, we cannot overcome unequal opportunity."

The gravamen of the Plaintiffs' motion is to force HEW to terminate its financial contributions to the states under Title VI. The intent of Title VI's termination power was discussed at length in Congressional debate, which states in part:

> "(T)he intent of Title VI is not to require a wholesale cut off of Federal funds from all programs in entire States, but instead to require a careful case-by-case application of the principle of nondiscrimination to those particular activities which are actually discriminatory or segregated." 4110 Cong. Rec. 7103 (1964)[4]

In considering the intent of HEW's authority to terminate funds supplied by virtue of Title VI, the Fifth Circuit in *Board of Public Instruction of Taylor Florida va. Finch*, 414 F. 2d 1068, 1076 (1968) stated:

> "The termination of Federal funds affects the lives of persons not represented in the administrative proceedings below. For their protection, we may not regard the limitations on the termination power as mere procedural niceties peripheral to the purpose of the Act."

The Court went further to say "we may not regard the limitations on the termination power as mere procedural niceties . . . . Congressional history indicates that limiting the scope of the termination power was integral to the legislative scheme . . ."

The aforementioned passages demonstrates two equally important points: (1) the "innocent beneficiaries" of Title VI funds must be protected; (2) the termination power of the agency is limited to and requires specific findings of fact as to the program by program violation.

This interpretation is supported in an Order of the Fourth Circuit in Mandel v. HEW, Civil Action No. 7-76-1, March 8, 1976 at 38-39, which states *inter alia*:

> "To compel all of these programs, regardless of whether or not each is discriminatory, to prepare a defense and endure protracted enforcement proceedings is wasteful, counterproductive, and probably inimical to the interests of the very persons Title VI

> was enacted to protect. It is far more equitable, and more consistent with Congressional intent, to require program delineation prior to enforcement hearings than to include all programs in enforcement proceedings. As the Fifth Circuit observed in *Board of Public Instruction v. Finch, supra*, 'a program should not suffer for the sins of others.' 414 F. 2d at 1079. Consequently, this Court concludes that, in the interest of justice, Title VI demands a program-by-program breakdown prior to enforcement proceedings (during voluntary compliance efforts). Since defendants have conducted no such examination, defendants have not complied with mandates of Section 2000d-1."

In short, to date the purpose of *Brown* has not been accomplished. But, more importantly, Black Institutions have a unique history and pristine background of not contribution to the programs to which the Civil War Amendments are directed, but rather ameliorating them. The educational progress or lack of advancement by Black people has been conditioned by the institution of slavery and other disparaging badges which have and today condition our metaphysics.

In assessing the past and future role of the predominantly Black Colleges and Universities the words of Mr. Justice Douglas, concurring in *Jones v. Mayer Co., supra* 445-446, are sobering to say the least:

> Some badges of slavery remain today. While the institution has been outlawed, it has remained in the minds and hearts of many white men. Cases which have come to the Court depict a spectacle of slavery unwilling to die. We have seen contrivances by States designed to thwart Negro voting, e.g., *Lane v. Wilson*, 308 U.S. 268. Negroes have been excluded over and again from juries solely on account of their race, e.g., *Strauder v. West Virginia*, 100 U.S. 303,

or have been forced to sit in segregated seats in courtrooms, *Johnson v. Virginia* 373 U.S. 61. They have been made to attend segregated and inferior schools, e.g., *Brown v. Board of Education*, 347 U.S. 483, or been denied entrance to colleges or graduate schools because of their color, e.g., *Pennsylvania v. Board of Trusts*, 353 U.S. 230; *Sweatt v. Painter*, 339 U.S. 629. Negroes have been prosecuted for marrying whites, e.g., *Loving v. Virginia*, 388 U.S. 1. They have been forced to live in segregated residential districts, *Buchanan v. Warley*, 245 U.S. 60, and residents of white neighborhoods have denied them entrance, e.g., *Shelley v. Kraemer*, 334 U.S. 1. Negroes have been forced to use segregated facilities in going about their daily lives, having been excluded from railway coaches, *Plessy v. Ferguson*, 163 U.S. 537; public parks, *New Orleans Park Improvement Assn. v. Detiege*, 358 U.S. 54; restaurants, *Lombard v. Louisiana*, 373 U.S. 267; public beaches, *Mayor of Baltimore v. Dawson*, 350 U.S. 877; municipal golf courses, *Holmes v. City of Atlanta*, 350 U.S. 879; amusement parks, *Griffin v. Maryland*, 378 U.S. 130; buses, *Gayle v. Browder*, 352 U.S. 903; public libraries, *Brown v. Louisiana*, 383 U.S. 131. A state court judge in Alabama convicted a Negro woman of contempt of court because she refused to answer him when he addressed her as "Mary," although she had made the simple request to be called "Miss Hamilton." *Hamilton v. Alabama*, 376 U.S. 650.

That brief sampling of discriminatory practices, many of which continue today, stands almost as an annotation to what Frederick Douglass (1817-1985) wrote nearly a century earlier:

> "Of all the races and varieties of men which have suffered from this feeling, the colored people of this country have endured most. They can resort to no disguise which will enable them to escape its deadly

aim. They carry in front the evidence which marks them for persecution. They stand at the extreme point of difference from the Caucasian race, and their African origin can be instantly recognized, though they may be several removes from the typical African race. They may remonstrate like Shylock—'Hath not a Jew eyes? hath not a Jew hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same summer and winter, as a Christian is?'—but such eloquency is unavailing. They are Negroes—and that is enough, in the eye of this unreasoning prejudice, to justify indignity and violence. In nearly every department of American life they are confronted by this insidious influence. It fills the air. It meets them at the church, at the hotel, at the ballot box,and worst of all, it meets them in the jury-box. Without crime or offense against the law or gospel, the colored man is the Jean Valjean of American society. He has escaped from the galleys, and hence all presumptions are against him. The workshop denies him work, and the inn denies him shelter; the ballot box a fair vote, and the jury-box a fair trial. He has ceased to be the slave of an individual, but has in some sense become the slave of society. He may not now be bought and sold like a beast in the market, but he is the trammeled victim of a prejudice, well-calculated to repress his manly ambition, paralyze his energies, and make him a dejected and spiritless man, if not a sullen enemy to society, fit to prey upon life and property and to make trouble generally."

Today the black is protected by a host of civil rights laws. But forces of discrimination are still strong.

The doors of Black Institutions without exception have, from the very beginning of their existence been open to

all races, sex, colors, creeds, and they have always collectively offered employment and other incidental privileges to all who passed through their doors, except where state law prohibited the same. They have been menders, healers for wounded minds and restless souls. They have produced sterling talent which has benefited this Republic beyond measure of calculation—not only in material contributions, but intellectual, cultural, moral and spiritual offerings. In a number of instances, Black Institutions have been more profoundly representative of the American Ethic than the larger, more affluent, schools of Higher Education in this country. Indeed, they have been and remain today a domestic "Marshall Plan" committed to a public offering of education attainment "in free simple absolute," rather than "an illusory expectancy" of educational opportunity.

The Black Institutions of Higher Education have welcomed, nurtured and developed the progeny of the slave system. As two distinguished scholars have recently observed:

> None of the institutions of the larger society work as well for Black people as they do for white people. They were not designed to do so. This is true of all the major institutions without exception. Of course, there is some variation; some institutions function worse for Black people than do others. But whether we think of education, health services, the communications media, religion, law enforcement, or any other dominant system of the larger society we see white racism at work. It is this force more than any other which makes Black children, Black families, and Black communities specially vulnerable to the vicissitudes of life; and it is the major cause of the widespread and continuing poverty within the Black community. *The combination of racism and poverty caused and maintained by the institutions of the larger society is, we contend, primarily responsible*

> *for the stormy past, present, and future of Black children in need.* (Dr. Andrew Billingsley, Jeanne M. Giovannoni, *Children of the Storm*, Harcourt-Brace-Jovanovich, Inc., 1972) (Emphasis added)

Finally, the institutions whose views are presented in this Amicus Brief, with backgrounds of perpetual service to all people, with missions and goals to make educational opportunities a reality rather than an empty expectation, it is impertinent to charge them with violating the law with the promotion of racism. It is an affront to categorize them in the same class as other institutions with ignominous histories of selective exclusion of Blacks, and other minorities, where these institutions have labored so long in the vineyards alone desparately seeking to overcome the disablements visited upon the principal victims of a racist society.

CONCLUSION

For the reasons stated, this Court should deny the Plaintiffs' Motion for Further Relief.

Respectfully submitted,

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STATEMENT BY THE NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER EDUCATION

GUIDELINES FOR THE REVISION AND STRENGTHENING OF STATE PLANS FOR HIGHER EDUCATION

The National Association for Equal Opportunity in Higher Education respectfully requests that you consider the following recommendations in preparing your orders to the Department of Health, Education, and Welfare regarding guidelines for the revision and strengthening of state plans for higher education in the continuing case of *Adams* v. *Richardson.*

1. The purpose of the state plans should be explicitly stated as increasing numbers of Black Americans educated at all levels of higher education (undergraduate, graduate and professional) and in all major fields of study in order to bring about equality and equity in American higher education.

2. The cornerstone of the state plans should be a series of concrete, systematic and long-range measures to protect, enhance and expand the historically and predominantly Black colleges and universities. In the *Adams* states these institutions continue to produce the overwhelming majority of college-educated Blacks. In the nation as a whole, they produce more than half of all Blacks earning bachelor's degrees. They have enormous potential for graduate and professional study; moreover, they serve a major function for the preservation and study of the Afro-American heritage. They also make an important contribution to inter-racial cooperation.

3. The state plans should facilitate an increase in the numbers of Black students graduating from the predominantly white institutions at all levels with undergraduate, graduate, and professional degrees.

4. The state plans should increase the level of racial integration at the predominantly white institutions. This includes the governing boards, administrative staffs, as well as their student bodies. Moreover, these institutions should be required to establish effective affirmative action programs designed to give special attention to the special needs of Black students and special training programs where necessary for staff and faculty development.

5. The state plans should be state-wide and system-wide in scope. They should be administered by a broadly representative body with authority to implement the plan. This official body should include Black educators and citizens representing at a minimum their proportion in the state populations. Moreover, the portion of the plan dealing expressly with Black higher education should be reviewed and approved by an advisory body, the majority of whose members are Black, with strong representation from the historically Black colleges and universities.

Please allow us to expand briefly on these five recommendations.

Increasing the Number of Educated Blacks

We have recommended that the explicit purpose of state plans should be to increase the number of Blacks educated at all levels and in all major fields. Our experience and observation is that this goal is often lost sight of in a number of state plans and in the positions sometimes taken by the Department of Health, Education, and Welfare, and plaintiffs in this case as well. In our experience and in our view, increasing substantially the numbers of educated Blacks at all levels and in all fields is the principal means by which meaningful integration may be brought about not only in higher education but in the professions and in American life generally.

This requires eliminating the disparity between Blacks and whites in undergraduate, graduate and professional

school enrollment and in graduation from these levels of higher education. It also requires the elimination of employment and salary disparities at all levels of the higher education system including the staffs of the governing boards. Equitable representation is also required on all governing boards of the system.

In setting criteria for a reasonable and equitable plan, certain background principles must be set forth which govern the plan. The principles from the perspective of the National Association for Equal Opportunity in Higher Education are derived from the following paragraph taken from the Opinion of the United States Court of Appeals of the District of Columbia in its ruling on the original order issued by you on June 21, 1973 which reads:

> "The problem of integrating higher education must be dealt with on a statewide rather than a school-by-school basis. Perhaps the most serious problem in this area is the lack of state-wide planning to provide more and better-trained minority group doctors, lawyers, engineers and other professionals. A predicate for minority access to quality post-graduate programs is a viable, coordinated state-wide higher education policy that takes into account the special problems of minority students and black colleges. As amicus points out, these black institutions currently fulfill a crucial need and will continue to play an important role in black higher education."

An analysis of the paragraph makes clear that there must be state-wide policies designed to provide:

1. "more and better trained Black professionals" which depends on access to schools and graduation followed by entry to and graduation from graduate and professional schools.

2. "*solutions to the special problems of Black students*" in gaining access to undergraduate, graduate, and profes-

sional schools and to completing their work. Most of these problems derive from the historic and contemporary unequal and inadequate elementary and secondary school education and job discrimination which depresses Black income levels and their ability to afford higher education.

3. "*an important role for historically Black colleges because they fulfill a crucial need.*" The colleges in most *Adams* states provide a majority of the Black baccalaureate degree earners each year. More and better Black professionals can only be generated by state-wide planning which builds on the existing ability of these institutions to produce the Black graduates who become professionals.

4. "*for the special needs of Black colleges,*" these special needs are based on historic inequities in funding and in the contemporary fact that they have responsibility for educating large numbers of Black students victimized by earlier inadequate education.

The policies must move toward the goal of equity between Blacks and white in:

1. Access and enrollment in the variety of types of institutions—2 year, 4 year, universities, graduate and professional schools;

2. Increased *retention* rates in moving through to completion of colleges;

3. Expanded *graduation* and enrollment rates after reasonable periods of enrollment;

4. *Access* to graduate and professional schools after graduation from college; and

5. Graduation from graduate and professional schools.

The State-wide Plan must focus on outcomes as stated in the five points above, with a recognition that to catch

up requires setting goals in advance of any population ratios.

NAFEO is concerned that the plans focus on the *educational* needs of Blacks, rather than on mechanical, numerical schemes which do not take into account the end results to be accomplished. The numbers that are of primary concern to NAFEO come at the end of the process in Black graduates of the colleges of a state. As a matter of policy it must be recognized that the historically Black colleges are and historically have been the primary producers of educated Blacks or *graduates* of colleges in the states. Their current roles and functions cannot be damaged or disrupted by mechanical schemes that deny the reality that they contribute more to the goal of an integrated society than any other institutions in these states and in the nation.

A recent study showed the 80% of the Black graduates in the South in 1973-74 were produced by historically Black colleges. Of the 26,000 Black graduates, 21,000 come from the historically Black colleges. Whatever integration that occurs in these states in the professions depends heavily on these graduates. Historically Black colleges, public and private, produce more than half of the 50,000 black baccalaureates produced nationally each year.

The strengthening of the historically Black colleges must be a major priority of the State-wide Plans to produce more and better higher education for Blacks.

Conversely, more pressures for increased proportions of Black students and faculty must be placed on the historically white institutions since they are most delinquent in producing education for Blacks. They cannot, however, be allowed to consciously plan to do that at the expense of already effective educational programs in the historically Black colleges.

Enhancing and Strengthening Historically Black Colleges and Universities

We have recommended that the corner-stone of state plans should be to protect, enhance, and expand the historically Black colleges and universities as the most effective way of expanding the pool of educated Blacks.

All the state plans should have an explicit commitment to special efforts for the education of Black Americans. It would be a mistake to assume that Black Americans have reached equality with white Americans and that the same approaches would be equally beneficial to members of both groups. Some of the features of the existing state plans and some views emanating from both plaintiffs and defendants in this case tend to obscure the harsh reality of existing racial inequities.

It is also important to recognize that this state of inequity and the state of disadvantaged experience by Black Americans generally did not evolve of its own accord or out of the voluntary actions of the private citizens alone. The history of this nation is replete with reminders that state action at the federal, state, and local levels has been intimately involved in maintaining this inequity. In recent years the publication of Alex Haley's *Roots* and the national television production of excerpts from this book graphically illustrated the concern of Americans generally for this unequal aspect of our history. Former President Lyndon Johnson expressed it as follows: "To be black in a white society is not to stand on level and equal ground. While the races may stand side by side, whites stand on history's mountains while blacks stand in history's hollows. Until we overcome unequal history, we cannot overcome unequal opportunity."

Professor Herbert O. Reid, Charles Hamilton Houston Distinguished Professor of Law at Howard University, has observed "America's moral dilemma has raised the stark constitutional issue of whether racial classifications

may be used for 'benign purposes.' Stated another way—may the state single out racial minorities for favorable treatment, for remedial, compensatory, or similar purposes. There has clearly emerged one area where government need not be color blind, indeed must be color conscious." (Annual Martin Luther King Day Convocation, University of California, Davis School of Law, February 4, 1977).

In short, because of the essence of inequity and because the state has been so heavily implicated in this inequity, special efforts are required by the state to ensure that compensatory measures are taken to move more rapidly toward equality. A major form of special effort is represented in the special-purpose institutions whose primary mission is the education of Black Americans. Another special effort is represented by affirmative action programs within the predominantly white institutions. Both forms of special effort must pay particular attention to the needs of Black Americans and should not seek to avoid the harsh realities of racial inequality.

Again, Professor Herbert O. Reid has spoken to this matter: "It is this writer's view that in order to achieve effective and positive results under the mandate of affirmative action, racial clasisfications and preferential treatment are necessary. Race must be taken into account in order to effectuate the goal of an integrated society."

"The theory supporting the concept of affirmative action is the benign treatment of minorities after generations of exclusion from the mainstream of American society. The concept itself demands more than mere state neutrality. What is demanded is positive action to either promote opportunities to qualified members of minority groups or to enable members of such groups to become qualified. No less is sufficient in order to overcome the residue of systemic institutional discrimination."

A similar view has been expressed by Professor Theodore J. St. Antoine, Dean of the University of Michigan Law School.

In supporting affirmative action in employment, Professor St. Antoine reminds us that the Constitution nowhere requires a color-blind approach, but "equal protection of the Laws" for all American citizens. Moreover, "the mandate of equal treatment . . . presupposes equal status of circumstances." Accordingly, it may be both necessary and constitutional to require "specified numerical goals in hiring minority group members and women, depending upon a comparative assessment of the current status of minorities, women and white males." (New York Times, "Affirmative Action, A 'Heroic' Measure," November 26, 1976).

Preferential treatment is a necessary means of providing for equality of opportunity and attainment in higher education. In this connection, then, the primary purpose of strengthening the Black colleges should be to enable them to do a better job of their primary mission of educating more Blacks. At the same time, it should be recognized that these institutions provide a variety of other very valuable functions not only for the Black community but for the society in general.

A second and most vital function is the preservation and study of the Afro-American cultural heritage.

Still a third function they serve is providing for the Black community social pride, a sense of positive identity and accomplishment and leadership. This is a wholly constructive function in a society which is culturally diverse.

But the functions of these historically Black institutions are not confined to the Black community itself. These institutions have long served and continue to serve as centers of interracial cooperation. As a class of institutions, the historically Black colleges and universities continue to be the most interracial institutions in Amer-

ica. This interracial cooperation is reflected in their student bodies, their faculties and staffs, their governing boards, the programs they conduct, their purchasing, savings and investment policies and practices. Consequently, the state plans should recognize these institutions as already in conformity with Title VI with both the letter and the spirit of Title VI and should place no further burdens on them by requiring arbitrary quotas of white students or staff or by requiring other means of racial balance.

State plans should forbid the dismantling of any of these institutions, or any state action which would have the effect of closing, limiting, or curtailing their operation, so long as they continue to serve their original purpose of focusing primarily on the education of Black Americans while maintaining an open posture to non-Blacks who wish to attend and who can benefit from their programs.

What is required to enhance these institutions are the following five measures at a minimum:

1. Financial support which is not only commensurate with the support provided to the white institutions but which carries also a compensatory feature. Thus, budgetary support for the historically Black institutions at something like 120 per cent of the formula provided to the other institutions is what we have in mind. Moreover, financial support for the institutions must take into account the historic underfunding of them since the time they became public institutions. It costs more to educate students who have been severely handicapped and who come from most socio-economic backgrounds. This should be reflected in the budgets of the institutions.

2. Capital outlays for these institutions should reflect the need for modern buildings, facilities and equipment of the highest quality equal to any in the state.

In many of these institutions considerable expenditures need to be made for upkeep and renovation of existing facilities.

3. New academic programs must be established under auspices of the traditionally Black institutions before expanding such facilities on traditionally white institutions. This includes a full range of undergraduate programs and selected graduate and professional programs, research programs, and community service programs which serve the needs of the Black community and the larger non-Black community as well. This also requires the location of some of the most prestigious professional schools in our society such as Medicine, Dentistry, Forestry, Veterinary Medicine, Pharmacy, Public Administration, Business and Law, in these institutions.

4. Finally, special programs for faculty and staff development must be instituted at these institutions so that existing staff may be helped to expand their interests, skills and abilities. No program of transferring or substituting new faculty should ignore major contributions existing faculty members have already made and are capable of making to the essential mission of these institutions. Moreover, salaries, benefits and other working conditions should be made competitive in these institutions.

5. State plans should give explicit recognition to the fact that these historically Black institutions are the most integrated educational institutions in America. This is true with respect to their governing boards, their staffs and faculties, and now increasingly to their student bodies. No state plans, however, should mandate any specific numbers or quotas of white administrators, faculty or students in these institutions as long as they are in keeping with the law and protective of the rights of all American citizens who wish to apply to them. Some suggestions on the part of both the defense and plaintiff

in this case would have the effect of squeezing our Black faculty and staff from some of these institutions in order to make room for white ones. In our view this is not consistent with the purpose of state plans; it serves no useful purpose and might have most destructive impact on these institutions and on the quality of racial progress in the community generally.

As the National Association for Equal Opportunity in Higher Education stated in its report to Secretary David Mathews of HEW on November 4, 1975, the government has the responsibility to assist these institutions meet what is a national purpose.

The goal for Black Americans is more than just equal opportunity. It is equal opportunity, equal attainment and equal productivity: There must be attainment following opportunity and institutional responsiveness can help this happen. No one is proposing lesser standards for attainment, but a recognition that it will not happen if people are admitted, enrolled and left alone to overcome earlier inequities without help.

There must be productivity following attainment. Blacks must stay in the programs they enrolled in and graduate in the same proportions as whites at all levels and across all fields. The degree taking will set the stage for full participation in the professional, technical and leadership sectors of America.

The historically Black colleges have operated on the basis of the goal of opportunity, attainment and productivity. Their leadership will be critical as others coming new to the task seek ways to provide opportunity without attainment and productivity.

Affirmative Action in Predominantly White Institutions

State plans should require that the predominantly white institutions increase their contribution to the overall production of Black graduates and increase their contribu-

tion to integrated faculties and staffs throughout the system. We have already indicated that special efforts in the form of affirmative action programs for faculty, staff and students are indispensable if these institutions are to meet their responsibilities. State plans must ensure that special efforts within the white institutions must consider problems of admission, enrollment, retention, financial aid, distribution goals, graduate goals, and faculty development.

Admissions Policies

A state-wide policy must be developed that gives equal access of Blacks to all institutions—two-year, four-year universities, and graduate and professional schools. The policy must not use admissions criteria whether tests or otherwise which disproportionately exclude Blacks. Ways have been found to increase Black access at undergraduate and professional schools without damaging so-called standards. We recommend that policy planners look at the efforts of the Council of Legal Opportunity, the special minority programs of the American Association of Medical Schools and the American Association of Law Schools.

States must not develop admissions policies which force historically Black colleges to move toward historically white colleges in admissions policies which will exclude Blacks. It appears particularly counterproductive to force changes in successful access policies. Admissions policies could put the emphasis on previous academic achievement and personal recommendations.

Enrollment Ceiling Policies

Enrollment ceiling policies must be reviewed to ensure they are not locking historic inequities in place. No state should be allowed to set an enrollment ceiling on Black enrollment so long as there are inequities in the proportions of Blacks enrolled in the state-wide system. Enroll-

ment ceilings tell schools that they cannot exceed a certain number of students in a given year or can only increase enrollment by a set percentage and then must turn students away.

Distribution Goals

Blacks shall not be disproportionately enrolled in two-year institutions and in non-collegiate work in vocational technical schools. To achieve the goals of the Appeals Court decision, plans must increase participation and completion in the baccalaureate collegiate sectors of the state system. State-wide policy and plans must impact maldistributions which see disproportionate numbers of Blacks outside the collegiate sector. The plan must have concrete steps for assisting Blacks in the two-year and non-collegiate sector to transfer to four-year institutions. This includes counseling and financial help.

Financial Aid

A state-wide policy on financial aid must recognize the disproportionately higher needs of Black students, especially in the collegiate sector where fees are substantial and residency is often required. Financial aid policies must be set that do not have the effect of forcing, for economic reasons, Black students into the least expensive institutions in the state. A state-wide review of the relationship between state programs of student financial aid and similar federal programs is required. Some state-wide approaches must be taken to securing higher amounts of financial aid for students in order to pursue the goals of equity required by the court order. Special care must be taken to ensure that the state-wide approach does not reduce existing levels of financial aid available in historically Black colleges, but strives to increase the pool in all colleges. Students in Black colleges are especially vulnerable to redirections in aid.

Retention Programs

A state-wide planning function to design and assist in the implementation of such progress should be developed. The best thinking in a state must be pooled and used to benefit all institutions. Experienced and knowledgeable Black educators can be especially influential and should be utilized to design such programs based on their experience in educating large numbers of Blacks and getting them into graduate and professional schools. These programs must focus on staff development work for faculty, counselors, administrators, and not just on differences of Black students. They must indicate how they intend to impact those responsible for helping Black students as well as the Black students themselves. Only if this is part of the planning can these programs be successful. Higher education senior faculty must have it made clear as a matter of state-wide policy that they must share in the responsibility for helping Black students.

Graduation Goals

Steady increases in the numbers and proportions of Blacks achieving baccalaureate degrees. This goal creates premises for programming that maximizes Black achievement and maximizes the ability of Black youth to meet rigorous academic standards. Higher education cannot slough off responsibility for helping make up for what the public schools did not do for racially discriminatory reasons. The final goal is equity in the proportion of whites and Blacks in the 25-34 age group with baccalaureate first professional degrees as well as graduate and professional degrees.

The plan should recognize that a disproportionate amount of the pressure to achieve these goals must fall on the predominantly white institutions. The historically Black institutions are already the corner-stone of enrollment in the baccalaureate, collegiate sector for Blacks.

Faculty Development

The focus in this area must be both on expanding the pool of available Ph.D.'s and in recruiting and hiring. The major goal is to increase the available pool from which to recruit. Some regional approaches may have to be ordered because of the peculiar nature of graduate education that tends to recruit students across state lines rather widely. A good graduate school prides itself on its cosmopolitan enrollees. The collective force of the public graduate schools, then, may be more effective than each state going it alone. There is already a regional compact Southern Regional Education Board that can be ordered to convene meetings and report back to HEW on its efforts. Black educators must be involved in the regional planning. The goal must be to move to a proportion of Black faculty on white campuses comparable to the proportion of Black students in the state-wide system by 1985.

We have recommended that the state-wide planning authority be broadly representative and have significant input from Black educators and Black citizens. In our view it is critical that the very structure for planning in each of the states be assessed by the Department of Health, Education, and Welfare as adequate and in keeping with the essential purpose of the plans. All or predominantly white planning bodies fly in the face of this requirement. Nor is it sufficient to have a small percentage of Blacks on these state-wide bodies. In addition to a representative number of Blacks on the overall state authority, we recommend very strongly that HEW be required to have all these state plans reviewed by an advisory group which is majority Black with some of its members drawn from the historically Black colleges and universities.

It is very important that those most intimately concerned, knowledgeable and committed to the effective

education of Black Americans be involved in an influential way in the very process of revising and strengthening these state plans. This is one way of ensuring that the primary goal of educating large numbers of Blacks may be kept at the center of the planning process. It is also a means of ensuring that these state plans do not inadvertently serve the purpose of dismantling those institutions and programs which have the most promise for educating larger numbers of Blacks.

This statement addresses the major concerns that we have with regards to maximizing and expanding opportunities for Black Americans.

Submitted by The National Association for Equal Opportunity In Higher Education by Miles Mark Fisher, IV., Executive Secretary.

MILES MARK FISHER, IV
Executive Secretary
The National Association for
Equal Opportunity in
Higher Education

HIGHER EDUCATION ADVISORY PANEL
GOVERNOR-ELECT ROEMER TRANSITION TEAM

March 7, 1988

Governor-elect Buddy Roemer
Transition Headquarters
Pleasant Hall, LSU-BR Campus
Baton Rouge, LA 70821

Dear Governor:

This is the report of the Advisory Panel on Higher Education named by you in late 1987.

You requested that we study Louisiana's public higher education situation with particular reference to "governance and structure, coordination with elementary and secondary education and vocational/technical training, and economic development."

Panel members have been diligent in their attendance at meetings concerned with our assignment, dedicated to reaching sound conclusions, and committed to providing you with appropriate recommendations.

Attached to this letter is a list of panel members, and the names of individuals who served as proxies at some meetings.

The work of the panel was made easier and more effective by the contribution of Danny Walker as Secretary, Coordinator of the staff, and Acting Chairman for one meeting. I'm particularly grateful for his effective assistance.

This report consists of our recommendations and a chronology of the panel's meetings and deliberations. Much more detail is available should it be required later. The highlights of the recommendations are: one system-one university; one policy-making Board of Governors; a strong administrative-management structure; a diversity

of institutions with role, scope and mission more sharply focused to eliminate needless duplication; the economic development role of higher education and coordination with all areas of education, public and independent, or private.

With this report we consider our assignment complete. However, the panel and its individual members stand ready to assist you in any way we can be helpful.

Thank you for giving us the opportunity to participate in this unusual undertaking.

Sincerely yours,

/s/ Joe D. Smith, Jr.
JOE D. SMITH, JR.
Chairman

JDSjr/gm

Attachments

Higher Education Advisory Panel

1. Joe D. Smith, Jr. (Chairman)
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3. Bill Cooper
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5. Dr. Henry Lacey, Associate Professor
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7. Virginia Kilpatrick Shehee, President
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8. Della Bonnette
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Represented by Richard Cusimano at one meeting

9. Dr. Charles Whitehurst, Director
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Represented by Dick H. Hearin at two meetings

10. Dr. Willene Taylor, Professor of English
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14. Emogene Pliner
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15. R. Tom Fetters, President
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Represented by Bill Wright, proxy,
at all meetings

16. Anthony J. Jones, III, President
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Grambling, LA 71245

GENERAL RECOMMENDATIONS

We propose a single system of public higher education in Louisiana to be known as the University of Louisiana.

The existing management boards and the Board of Regents should be eliminated, to be replaced by a new policy-making, governing Board. The Board would have the power to define the role, scope and mission of each public institution of higher education in the State of Louisiana. The Legislature should appropriate to the Board in a lump sum the funds necessary to operate such institutions, and the Board should have the authority to allocate among such institutions the funds so appropriated.

The institutions of higher education now operating under the three management boards would be constituent components of the new single system governed by the new Board.

Colleges and universities would maintain their present names, amended to specify that each is part of the University of Louisiana. After two years in the new system, any institution may petition the Governing Board for a name change that will more clearly specify its role, mission and geographic location.

BOARD COMPOSITION AND ORGANIZATION

The new governing board, to be known as the Board of Governors, would be composed of fifteen members to be appointed by the Governor, with confirmation by the Senate after a timely public hearing. Terms of service on the Board would be six years, with no more than one re-appointment permitted. No individual would be permitted to serve more than twelve years. Terms of service would overlap, with the service of five members expiring every two years.

Initially, the Governor would choose one person from each of the three management boards and from the Board

of Regents as his first four appointees to the Board of Governors. In addition, he would appoint eleven other initial appointees. The fifteen initial appointees would be divided by the Governor into three groups of five each, to serve terms of two, four, and six years, respectively. Thereafter, the regular rotation of one third of the Board members' terms expiring every two years would be operative.

The Board would elect annually at its first regular meeting a Chairman, a Vice Chairman, and a Secretary and, thereafter, have regularly scheduled meetings throughout the year. The Board would provide for those standing and ad hoc committees as it deemed necessary for the conduct of the Board's business, and it would establish its own rules and order of business so long as they are not in conflict with state laws and practices.

SELECTION OF BOARD MEMBERS

The Governor shall, through his appointment powers, ensure that the members of the Board of Governors are broadly representative of the state's geographic, racial, gender, ethnic and political composition.

The selection of individuals for appointment, and the resulting mixture of persons comprising the Board of Governors, is the most important factor affecting the future quality of higher education in Louisiana. Every choice is a critical one. We cannot stress too strongly the necessity of appointments of persons of intelligence, experience, concern and commitment.

Since the quality of Louisiana's higher education must compare favorably with that available in other states and the world, we should not hesitate to learn and profit from the experience of others. The appointment of one or more non-Louisianians with unusual qualifications and experience could be most helpful.

In the past, persons with previous experience in higher education have made notable contributions to the Coordinating Council and the Board of Regents. Such experience should be considered, but not be mandatory, in the selection of some nominees for the Board.

No person should be eligible for appointment to the Board, or be permitted to continue to serve thereon, who is or becomes, or is married to, or marries, a member of the legislature, an elected or appointed official or employee of the state government, or an employee of the Board or any of the constituent institutions.

Active participation in the Board's deliberations and decisions by every Board member is necessary for the success of the Board's mission. We urge the Board to consider and adopt by-laws or rules to that end.

POWERS OF THE BOARD

The Board of Governors should be granted the broad and general authority and power to develop, sustain and govern the sole system of public higher education in Louisiana and all of its components. That power and authority should include but not be limited to:

1. The development and maintenance of a Strategic Plan for Louisiana Higher Education.

The Plan should include a defined role, scope and mission for each institution or unit of the higher education system. The Plan should reflect the educational aspirations of the state and take into consideration the long-range needs of the state and its citizens as well as those functions presently being performed by existing institutions of public higher education in Louisiana. The Board should have full authority to carry out the Plan.

Pursuant to the Strategic Plan for Louisiana Higher Education, the Board would be responsible for the general determination, control, supervision, management and gov-

ernance of all affairs of the constituent institutions. In that connection, the Board would be authorized to adopt such policies and regulations as it may deem wise. The Board would be authorized and encouraged to delegate any part of its authority thought appropriate by it to the President of the University and, through the President, to the Chancellors and other officials of the University and its component units.

2. The search for, identification of, and employment of the key officers of the systems and the Chancellors of the component units.

The Board of Governors would be encouraged to establish high standards, great expectations, and commensurate compensation as it seeks the best qualified individuals to lead our efforts in higher education.

The Board would be authorized to elect a President of the University, who would be the Chief Administrative and Chief Executive Officer of the University. The President would be authorized to recommend the initial administrative structure and system personnel requirements to the Board for its approval. Thereafter, the President would be authorized to recommend to the Board those individuals the President deems best qualified as senior officers of the University and Chancellors of the constituent units. All would serve in such roles at the pleasure of the Board. Provision should be made within the President's professional staff for persons of high competence and strong professional experience in such areas as academic affairs, public-service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs, institutional development and economic development.

The President should have complete authority to manage the affairs and execute the policies of the University and its constituent institutions, subject to the direction

and control of the Board of Governors. The President should personally represent before the state, the region and the nation the ideals and the spirit of the University. As the chief executive, the President should be the official administrative spokesman for, and the interpreter of, the University to the alumni and alumnae, the news media, the educational world, and the general public. The President should be responsible for the presentation and interpretation of all University policies, recommendations and requests to the Legislature, the Governor, state officers and commissions and the Federal Government.

The President, as the chief executive officer of the University, would perform all duties prescribed by the Board of Governors. The President would be responsible to the Board of Governors for the prompt and effective execution of all laws relating to the University and of all resolutions, policies, rules and regulations adopted by the Board for the operation of the University and for the government of any and all of its constituent institutions, and the President's discretionary powers should be broad enough to enable the President to meet his or her extensive responsibilities.

The President would be directed to prepare and submit to the Board of Governors an annual report and, in addition, such other reports and recommendations concerning the University and its constituent institutions as the President may deem wise or as the Board may require.

The President would be authorized to make nominations for all appointments that are to be acted upon by the Board of Governors and to make recommendations for all promotions, salaries, transfers, suspensions and dismissals that are to be acted upon by the Board. The Board would, however, reserve the right, in all instances, to act on its own initiative.

3. Absolute and final control over degree programs, education and administrative units, new institutions

(subject to legislative authorization) and the reduction, closing, extension or merging of existing institutions, the names of institutions, off-campus instruction, admission standards, articulation or credit transfer, joint educational arrangements with private colleges and universities and other agencies of the state government and its subdivisions.

4. Budget and financial control of all units and institutions in the University system.

The President of the University, with the assistance of the staff and the Chancellors of the institutions, should initially develop and annually update a plan to meet equitably the financial requirements of the University's units. The plan should reward high quality instruction, research, and public service.

The President annually should cause the preparation of a comprehensive budget for operations, including all available revenue sources, and a budget for capital improvements, both of which should be presented to the Board of Governors for review and consideration. Upon approval by the Board, there would be submitted to the Legislature a request for appropriations for higher education based on the approved budgets.

Appropriations should be made to the Board of Governors of the University as a lump sum, and the Board should have the authority to revise the budgets to conform to available funds and to distribute allocations to the institutions.

The Board should be authorized to establish one or more special endowment funds which may receive private contributions, any state appropriations, and, at the end of the fiscal year, any unspent budgeted operating appropriations. The endowment income should be used for stated purposes, but the principal should not be subject to invasion.

THE DIVERSE ROLE OF THE INSTITUTIONS

Louisiana must have a variety of high quality institutions of higher education so the state and its citizens can compete favorably in the nation and in the world. Diversity and quality are demanding of limited resources. Therefore, the Board must plan and build specific strengths at each institution. Unwarranted program duplication, especially those of less than high quality, should be eradicated and should not be permitted to recur. The institutions should be diverse and differentiated by tradition; faculty and resources; defined rule, scope and mission; and state and area needs.

We propose that there be four categories of institutions as measured by the type, variety and number of degrees granted, the varying emphasis on instruction, research and public service, and standards for admission to undergraduate education. They are:

Doctoral I. This institution should constitute the state's single "flagship" university. It should offer multiple doctoral programs of the highest possible quality, enroll and graduate a sizable number of doctoral recipients, engage in diverse, organized research, and include professional schools. Undergraduate admission standards should be the highest of any of the state institutions.

We recommend that a reconstituted Louisiana State University (consisting of LSU-BR, the Law Center, and the Agricultural Center under one Chancellor) be the Doctoral I institution.

Doctoral II. These institutions should offer a limited number of carefully selected doctoral-level and/or professional programs, other post-baccalaureate offerings, and strong baccalaureate programs. Faculty research and public service for the state and area should be encouraged. Admission standards, while less than Doctoral I, should be higher than those for the Baccalaureate institutions.

Baccalaureate. These institutions should concentrate on undergraduate baccalaureate level offerings. There may be very limited masters-level and specialized graduate offerings. Admission standards of the baccalaureate program should be some combination of graduating class rank, test scores, and/or a transcript of satisfactory high school credits.

Admission to a two-year junior division of such institutions should be authorized for every high school graduate. Certificate and associate degree programs should be offered.

Two-Year or Community College. This group of institutions should provide certificate and associate degree offerings as well as demand-justified undergraduate course offerings for transfer to baccalaureate degree-granting institutions.

Careful studies should be made of Delgado Community College and other states' experience in the area of combined academic education/vocational-technical training to see if such combinations, operating within the higher education framework, offer distinct advantages for Louisiana students and the state's economic progress. If so, vocational-technical institutions should be placed under the governance of the Board.

FUNDING FOR HIGHER EDUCATION

Present funding for higher education is woefully inadequate when compared with other states. It is estimated that an additional $160 million in state appropriations would be required in the next fiscal year if Louisiana expenditures for that purpose are to equal the average of Southern (SREB) states. However, we should strive not to be equal to the average of the Southern (SREB) states, but to be the best in the South. Hence, substantial additional funding should be provided for higher education, even as cutbacks are required in other

areas. By so acting, Louisiana will demonstrate to the Nation our commitment to education as our number one priority.

While the reorganization of higher education proposed by the Advisory Panel will make better use of available funds, it is no substitute for the additional appropriations required to improve and sustain the desired quality of public higher education in Louisiana. While some staged implementation of such an ambitious funding program may be required, the implementation of a policy of substantially increased funding for Louisiana public higher education (even at the cost of reductions in state spending in other areas and, if necessary, higher taxes) should begin at once.

Also, needing change is the policy of holding institutions harmless by maintaining financial support at a previous level in spite of changes in the institution's operations which would normally reduce the funds to which it is entitled. The concept of hold harmless should be eliminated. A staged elimination should provide time for all affected to accommodate to the new practice. We suggest a phase out over two years.

INSTITUTION ADVISORY BOARD

We recommend the establishment of Advisory Boards for each unit in the higher education system.

The size of each board should range from seven (7) to twenty-one (21) members, as authorized by the Board of Governors.

Members of the Advisory Boards should serve four-year terms with one-half of the membership's terms expiring every two years. Members should be permitted to be re-appointed only once, with total service limited to eight years.

Appointments to such Advisory Boards should be recommended by the Chancellor of the particular institution and the President of the University, with confirmation by the Board of Governors.

The Advisory Boards should meet on the call of their respective Chancellor, but at least quarterly.

The responsibility of the Advisory Boards should be to advise and assist the Chancellor of their respective institution, in such ways as the Chancellor proposes, in improving the standing of the institution and the quality of its program.

ECONOMIC DEVELOPMENT

Assistance in the economic development of the state of Louisiana should be a prime responsibility of the University of Louisiana. The President of the University should develop, in collaboration with the appropriate agencies of state government and the private sector (including private institutions of higher learning), a plan to support the state's economic growth and development by the best utilization of public higher education's talents and resources. Specific suggestions have been proposed by the Advisory Panel on Economic Development.

Budget provisions should be made for this activity, and the Legislature should authorize and appropriate funds for this purpose.

An annual report of activities and accomplishments should be made to the Board of Governors, the Legislature, and the Governor.

ACCESS

It should be the policy of the state of Louisiana that access to the opportunity for higher education shall be provided for all individuals who have earned a high school diploma.

While an open admission policy should not, as discussed under "The Diverse Role of the Institutions", be available at every institution, the Board should try to make basic higher education available and affordable through the best use of facilities and resources of existing institutions. Where higher admission standards are required, such standards should be implemented in stages over a reasonable period of time.

Financial assistance on the basis of need should be provided through grants, loans, scholarships, employment or some combination of all for as many as possible.

COORDINATION OF EDUCATION

There should be established a Council on Education for the State of Louisiana.

The Council should have the responsibility for coordinating the planning and policy-making of all major agencies and groups, public and private, involved in education. The Council should be composed of the following:

1. The Chairman and Vice Chairman of the Board of Elementary and Secondary Education.
2. The Superintendent of Education.
3. The Chairman of the Louisiana Catholic Conference Superintendents Committee representing parochial schools of the Roman Catholic Dioceses in Louisiana.
4. The Chairman and Vice Chairman of the Board of Governors, University of Louisiana.
5. The President of the University of Louisiana.
6. The Chairman of the Board of the Association of Independent Colleges and Universities.
7. The President of the Association of Independent Colleges and Universities.

8. A representative of the independent schools (K-12), now organized as the Louisiana Independent School Association.

9. A representative of the proprietary schools (K-12 and post high school) now organized as the Louisiana Association of Private Schools and Colleges.

10. The Chairmen of the Education Committees of the Louisiana Senate and House of Representatives.

The Council shall report annually, and more frequently if appropriate, on the state of education to the Governor, the Louisiana Legislature, and the citizens of the state. The Governor is encouraged to consult with the Council and to use its services to improve the quality of education, and the quality of life in the State of Louisiana.

The President of the University of Louisiana should serve as Chairman of the Council, and staff assistance should be authorized from the higher education system for the Council's work.

INDEPENDENT COLLEGES AND UNIVERSITIES

For over 160 years independent colleges and universities have served the citizens of Louisiana. Over 20,000 students annually receive quality and value measured education from these valuable assets of our state.

In 1975 the Legislature enacted the Aid to Independent Institutions legislation and appropriated $125 per semester for each FTE Louisiana undergraduate. In 1984, the Act was amended to raise that amount to "1/10th of the average state formula appropriated for full-time students in Louisiana's publicly-supported colleges and universities during the preceding fiscal year." But since 1984 no money has been provided for that appropriation.

In 1987-88, an appropriation of less than $6 million would be required to satisfy this act.

These independent institutions educate many Louisianians. Without them, education costs for the state would increase sharply. More importantly, these institutions are valuable yard sticks against which we can measure performance by public institutions in the areas of quality and value.

We believe state financial assistance for these institutions and their students is justified and deserved. We recommend that appropriations be made to fund fully the aid to Independent Institutions' program as soon as possible.

Background on Panel Meetings

In December, 1987, Governor-elect Buddy Roemer named an Advisory Panel for Higher Education. The letters of appointment stated that "the panels are designed to give Buddy and the transition team a broad perspective on the issues." The charge of the panels is to make general consensus recommendations to Buddy by March 1, 1988.

The panel's first meeting was held on Thursday, January 7, 1988 at Pleasant Hall on the LSU-Baton Rouge campus.

The Governor-elect, appearing at that first meeting, outlined the panel's purposes and responsibilities. He requested that the group "study the structure and governance of higher education; the quality of Louisiana's institutions and offerings; the role of education in economic development, and in keeping our best and brightest graduates at home."

He also stressed his concern with the relationships between higher education, elementary and secondary education, and vocational-technical education. He named the states of North Carolina, South Carolina, and Oklahoma

as respective examples of educational excellence in each of these fields and urged the panel to make recommendations to improve Louisiana's efforts in these areas.

Others invited to make presentations at the first meeting were Dr. Kerry Davidson, Deputy Commissioner for Academic Affairs of the Board of Regents, and Mr. Marvin Roubique, Deputy Commissioner for Finance, Board of Regents.

The panel's second session was Wednesday, January 20. Making presentations at the meeting were Mack Barham, attorney for the Board of Regents, Mrs. Sharon Beard, Deputy Commissioner for Planning and Research, Board of Regents, and Emogene Pliner, Vice President of Public Affairs Research Council and a panel member.

The first two speakers dealt with the Higher Education Consent Decree, its future, and its possible effect on any proposed change in structure, governance, institutional admittance standards and other facets of higher education. Miss Pliner reviewed the history of educational developments in Louisiana to promote a better understanding of how we arrived at our present status.

At the meeting on Wednesday, January 27 to which representatives of the three management boards and the Regents had been invited, there were many suggestions.

Appearing were: Mr. Robert Wright, Chairman, Board of Trustees of Colleges and Universities, and that System's President, Dr. Larry Crain; Mr. Joe Terrell, Chairman, Board of Supervisors of Southern University; Dr. Allen Copping, President of the Louisiana State University system, and Bill Silva, Vice President for Finance and Administration; Robert Bodet, Chairman of the Board of Regents, and Mrs. Sharon Beard, Acting Commissioner of the Board of Regents. Also heard from were Dr. William Arceneaux, president of the Association of Independent Colleges and Universities and former Com-

missioner for Higher Education of Louisiana; and the Honorable William Jefferson, attorney for the Southern Board of Supervisors in the Consent Decree matter.

The panel convened on Wednesday, February 3rd, to hear from Dr. Roy Carroll, Vice President for Planning, of the University of North Carolina.

A full morning of discussion gave the group an excellent opportunity to become fully conversant with higher education in North Carolina.

Following lunch, Jim Clinton, President of Gulf South Research Institute was invited to speak on the role of Higher Education in Economic Development through Technology Transfer.

The co-chairperson of the Vocational/Technical panel provided an interim report on that group's findings.

Wednesday, February 10, had been set aside for a full discussion of issues concerning possible structure and governance. Danny Walker acted as chairman in the absence of Chairman Smith who was ill. Full discussion ensued with some consensus reached.

Former Representative, now Senator, John B. Hainkel asked to be heard. He urged the panel to make strong recommendations for changes in higher education.

Stephanie DeSelle reported on a meeting of Chairman Smith with four Senators—Bares, Brinkhaus, Osterberger and Picard. They expressed their willingness to hear and act on the panel's recommendations.

The panel convened on Thursday, February 18, and discussed a proposal for changing the higher education system. There was strong consensus on a number of points. It was proposed that written drafts be prepared for the determination of final wording and formal action.

The panel met at 9:30 a.m. on Wednesday, February 24.

First on the program was Miss Sally Clausen, Commissioner for Higher Education, Board of Regents. She outlined her plans and goals for the Board of Regents and pledged the assistance of her staff in the panel's work.

Because of the need for coordination in the area of education, the chairpersons of two related advisory panels were invited to outline the findings and tentative recommendations they would make to Governor-elect Roemer.

First was Colleen Andrus of the Elementary and Secondary education group, followed by Barbara Manner of the Vocational/Technical Education panel.

They were followed by Tim P. Ryan, a co-chairman of the Economic Development Advisory group who spoke on higher education's role in economic improvements.

The final planned speaker of the morning was Jake Netterville who has chaired a team of accountants charged with examining higher education finances to try to identify areas of cost reduction and resultant savings.

A non-scheduled presentation to the panel was made by the Chancellor of the University of New Orleans, Dr. Gregory M. St. L. O'Brien.

Following lunch Dr. Bill Cooper of the panel presented comparative higher education appropriation figures for Louisiana and SREB states.

The group concluded the day by discussing and approving in part a draft of statements formulated from the consensus reached the previous week. Re-drafting would be done with several new sections added for final consideration on the morning of Thursday, March 3.

The group met at 9:30 a.m. on Thursday, March 3.

The draft of the proposed report to Governor-elect Roemer was distributed for discussion and action. The report, as amended, was adopted.

In the afternoon, the panel heard from Robert Scott, president of the Community College System of North Carolina, a former Governor of that state, who was instrumental in the change in that state to the present system.

His presentation and subsequent discussion, particularly in the area of vocational-technical training for economic development, caused the panel to recommend further study of the governance of vocational-technical education and training.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action Number 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISANA, *et al.*

AFFIDAVIT OF WILLIAM D. HAWKLAND

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

WILLIAM D. HAWKLAND

who, being first duly sworn, deposed and said that:

1. Since 1979, I have been Chancellor of the Paul M. Hebert Law Center (Law Center), which was formerly known as the Louisiana State University Law Center. It is part of the Louisiana State University System and is located in Baton Rouge, Louisiana.

2. As the chief administrative officer of the Law Center, I have knowledge of the facts set forth below.

2. Since my initial appointment, I am not aware of anyone who has been excluded from participation in,

been denied the benefits of or been subjected to any discrimination under any program or activity on any campus within the LSU System on the ground of race or color.

4. The Law Center has complied in good faith with all obligations which it asumed under the terms of the 1981 Consent Decree entered in this action. The Law Center has taken substantial affirmative action to assure equal educational and employment opportunities. Special recruitment strategies have been implemented in the effort to increase black enrollment. These special recruitment strategies are more fully documented in the affidavit of Eulis Simien, Jr., Other-Race Recruiter for the Law Center, who has primary responsibility for increasing other-race presence on the Law Center campus.

5. Regular admission to the Law Center is based upon objective admission criteria. In order to qualify under these criteria, a student needs a 90 index. This index is calculated by taking the sum of 2 X the LSAT score and 10 X the grade point average (GPA). For example, a student with a 3.0 GPA would need an LSAT score of 30 in order to qualify under our regular admission criteria.

6. Recent statistics made available from the Law School Admissions Council/Law School Admissions Services are attached as Appendix "A." These statistics are indicative of the disparity in the traditional indicators of law school success between Black and Caucasian law school applicants. In terms of numbers, in the 1986 application year, there were only 294 black applicants in the entire country with a 30+ LSAT score and 3.0+ GPA. Accordingly, only a very small number of blacks qualify for admission under the regular admission criteria of the Law Center. The mean for blacks is 21.19 LSAT and 2.62 GPA. For whites, the mean is 31.27 LSAT and 3.02 GPA.

7. Since there are relatively few blacks with good indicators of law school success, there is very intense competition among over 170 ABA-approved law schools to enroll this same pool of students. Based upon information received from admission officers in other schools, it is believed that most blacks who qualify under the Law Center's regular admission criteria would also qualify for admission to any other law school in the country. Also, it is difficult for the Law Center to complete successfully with New Orleans for black law students. The highest percentage of blacks in the state is in New Orleans and, with two law schools located in New Orleans, it is difficult to attract black law students to Baton Rouge.

8. In an effort to increase black student enrollment, the Law Center admits blacks who do not qualify for admission under the regular admission criteria. The Law Center has found, however, that students substantially below the regular admission criteria are usually lost to attrition. Since the loss of substantial numbers of blacks to attrition would be counter-productive, the Law Center seeks to admit only those black students who are fairly academically solid. These students are still within the group for whom there is substantial competition.

9. While the Consent Decree provided special scholarship funds for certain professions, none was made available to the Law Center. The Law Center has used its own resources to assist in the recruitment of minority students. In 1988, the LSU Board of Supervisors authorized the Law Center to award up to 10 three-year tuition waivers per year to minority students. It is hoped that this financial support will assist in the competition for black candidates.

10. The Law Center is committed to the principles of equal educational and employment opportunity, and it

will continue its affirmative efforts to assure equal educational and employment opportunity.

/s/ William D. Hawkland
WILLIAM D. HAWKLAND

SWORN TO AND SUBSCRIBED before me this 30th day of May, 1988.

/s/ Daniel J. Birsten
Notary Public

[Appendix A Omitted in Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action Number
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al*

AFFIDAVIT OF EULIS SIMIEN, JR.

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

EULIS SIMIEN, JR.

who, being first duly sworn, deposed and said that:

1. On January 1, 1982, I became the Other-Race Recruiter for Paul M. Hebert Law Center (Law Center), which was formerly known as the Louisiana State University Law Center. It is part of the Louisiana State University System and is located in Baton Rouge, Louisiana. I am an assistant professor of law with the Law Center and except for the academic year 1985-86 I have been teaching at the Law Center since the 1984-85 academic year. During 1985-86, I was pursuing graduate legal studies at Columbia University School of Law.

2. From my experience at the Law Center, I have knowledge of the facts set forth below.

3. Since my initial employment with the Law Center, I am not aware of anyone who has been excluded from participation in, been denied the benefits of or been subjected to any discrimination under any program or activity on any campus within the LSU System on the ground of race or color.

4. The Law Center has taken substantial steps to ensure educational opportunity for students for all races, to increase other-race student enrollment, and to assist other race students in their successful completion of their studies at the Law Center.

5. In Summer, 1987, the Law Center instituted a new program for black students whose admission statistics were below the regular admission criteria but who the admissions committee believed might be successful in law school. These students are admitted to the law school on the condition that they successfully complete a four-week course in the summer prior to their first year. The purpose of the course is to allow a member of the faculty an opportunity to assess the students' potential for success and to teach some of the skills needed for successful transition into law school. In addition to the conditionally admitted students, the course is offered to all black students who do not meet the regular admission criteria.

6. The Law Center has also instituted an Information Weekend held in the spring of each year. The Law Center writes to pre-law advisors at undergraduate schools in this geographic area of the country and issues personal invitations to black students who are interested in attending law school. The students are provided with lodging and meals during the weekend and are presented with seminars, mock classes, and information on financial aid. Black speakers are featured and black practicing lawyers are present to encourage the students and provide information to them. The Information Weekend is intended to promote interest in attending the Law Center

and to assist the student who does enroll in successfully completing the law school curriculum.

7. Upon request of the Law Center, the Law School Admissions Council provides information on black students from Louisiana, Texas, Mississippi, Georgia, Alabama, Florida and Arkansas. The students from this list which would appear admissible (either conditionally or unconditionally) are contacted and encouraged to attend the Law Center. In addition to visits to undergraduate campuses in this geographic area of the country with high concentrations of black students, a representative from the Law Center attend the Chicago Law Forum presented by the Law School Admissions Council. The purpose of these visits is to attract black undergraduate students interested in law to the Law Center.

8. A Law Center Black Alumni Association was recently formed. This association allows for a closer relationship between the Law Center and its black alumni. The first year of the association was very successful.

/s/ Eulis Simien, Jr.
EULIS SIMIEN, JR.

SWORN TO AND SUBSCRIBED before me this 27th day of May, 1988.

/s/ Warren L. Mengis
Notary Public

A BRIEF STATEMENT

BY

B. K. AGNIHOTRI
CHANCELLOR
SOUTHERN UNIVERSITY LAW CENTER

REGARDING

SITUATION OF SOUTHERN UNIVERSITY LAW CENTER IN LITIGATION OVER DESEGREGATION OF HIGHER EDUCATION IN LOUISIANA

SITUATION OF SOUTHERN UNIVERSITY LAW CENTER IN LITIGATION OVER DESEGREGATION OF HIGHER EDUCATION IN LOUISIANA

OVERVIEW

Since 1985, the Law Center has been a distinct and administratively separate part of the SU System, on the same level as SUBR, SUNO, SUSBO, with its own Chancellor, budget, and line of reporting directly to the System President. The relevant features of the Center's operations need over-all description and understanding in the current discussions.

Desegregation of the Law Center is neither an objective, ideal, or hope of the Law Center—it is an *accomplished fact.* There is probably no other part of Louisiana higher education so admirably attuned to the aspirations to race-neutral higher education which motivate the state and federal agencies in the ongoing effort.

For this reason, the Law Center should be disassociated altogether from those institutions of higher education being viewed as targets of desegregation measures. On the contrary, its only place in those strategies should be as model.

Furthermore, the inclusion of the Law Center in those strategies undermines public confidence in the true basis and feasibility of desegregation, and demoralizes those engaged in its implementation. No likelier effect than that can be foreseen if the "*flag-ship*" *of desegregation* is subjected to the same unsettling decrees as those which may be justified for those not in compliance, to assure that they become so.

Thus every change suggested for the Law Center's operation—desegregated to the envy of most of the state's other institutions—should be required to come with a per-

suasive argument that further race-neutrality is needed: that the change carries more promise of success than those earlier and successfully made; and that the change is not sought for unrelated reasons that jeopardize desegregation in place.

BASIC FACTS

1. DESEGREGATION ACHIEVED

The Law School is and has been fully desegregated:

(A) Faculty

Full-time:

Black	— 60%
Non-black	— 40%

Part-time:

Black	— 45%
Non-Black	— 55%

Over-all:

Black	— 50.3%
Non-black	— 49.7%

(B) Student Body

Black	— 58%
Non-black	— 42%

2. EXPLANATION OF ACHIEVEMENT

This race-neutrality has been uncoerced, genuine and exemplary.

The Southern University Law Center adheres to and promotes the principle of equal opportunity without regard to race, sex, color, creed or national origin. Although conceived and bred in a not-so-color-blind era, it has developed into the quintessential institution personifying those tenets of truth, equality and justice which constitute the very foundation of the American creed. Of course, this achievement did not come into fruition over-

night nor may it be attributed to the vagaries of coincidence or happenstance. Rather, this present success story—notwithstanding overwhelming obstacles—is the handiwork of persons with vision, dedication, devotion, compassion and an inveterate commitment to the belief and principle that excellence and accomplishment are indeed color-blind.

An environment of harmony had to be created for attracting students of all races; a welcoming willingness and conscious moves had to be made to desegregate faculty thereby inspiring confidence in all constituents of the Law Center.

3. ACHIVEMENT IN CONTEXT OF TOTAL EFFORT

This spectacular achievement has produced at least three much desired results:

1. Not only lawfully required desegregation, but indeed full integration of a state institution of higher education.
2. A cadre of black lawyers and leaders that would not have otherwise come into existence.
3. A role model for other institutions to emulate.

The *Master Plan for Higher Education*, mentioned later, rightly concluded (p.8):

> "It is our conclusion, then, that it is essential for the well-being of all the people of Louisiana, not just the blacks, for Southern University Law School to remain in existence and to grow in size and strength."

4. SHORT-SIGHTED MEASURES BORROWED FROM OTHER CONTEXTS

The Law Center achieved desegregation under the Consent Decree without being required to follow any specific

measures, by good faith, sincere, and innovative means of its own wise choosing. Other segments of higher education did not. It is to be expected then that a variety of specific remedies will be ordered, designed to force others into paths the Law Center voluntarily pursued. Among such measures will be, no doubt, financial inducements for faculty, students, and staff to move about in race-neutral settings; targeted recruitment programs; curriculum splits to shunt students into paths where desegregation is desired.

5. COST-BENEFIT CONSIDERATIONS IN REMEDIES PURSUED FOR THEIR OWN SAKE

There was one over-arching factor favoring the result of the Law Center's de-segregation effort—it was voluntary, sincere, and pursued in subdued, patient action visibly grounded in the most familiar reasons for desiring race-neutrality, reasons embedded in various views of history, religion, and human dignity. The silence of the Consent Decree as to specific measures made this possible, and the different approach at many other institutions made the Law Center's approach all the more keenly felt and affectionately embraced. Without that true perception of the effort as "desegregation from within," results would have seemed too gradual in coming, means too intrusive on other desiderata.

The risk of blanketing the Law Center under the whole spectrum of remedial decrees discussed as possibilities in another section is precisely that the very spirit of the Law Center's program in this regard—a model of attitude —will be destroyed instead of rewarded.

6. RADICAL PROPOSALS FOR MERGER OR RELOCATION

Relocation

Some persons unfamiliar with the Law Center's situation have gone so far as to consider the possibility of physically relocating the Law Center, evidently without

pausing to consider how that measure could conceivably promote further desegregation. The advantages (in this and other respects) of *not* re-locating it are pointed out in Appendix C of the 1977 *Master Plan for Higher Education* (p. 9), commissioned by the Board of Regents, as follows:

> "We have also concluded that the Law Center should not be moved to another location. Just as there are advantages to LSU from being located in the state capital there are advantages to Southern being there. Those advantages include proximity to state government, the availability of summer jobs in government, and most important of all, the present location in a predominantly black community as part of a predominantly black university."

More to present purpose, the consultants (the Dean of Stanford and Associate Dean of the University of Illinois law schools) conclude:

> "Move to any other location would deprive the law school of these benefits and would run the very high risk of converting the school to a predominantly white institution. The latter, in turn would raise anew the problems of providing legal training for blacks observed at the other existing institutions."

Merger

In similar haste and apparent lack of familiarity with the Law Center's success, some have considered merger with the other state-supported law center as a remedy—certainly not for any problem at this one—but for problems at the other. Such a merger would dilute in a combined program the expertise achieved as this Law Center, without any accompanying justification for believing that the expertise cannot be developed independently there, the way it developed here. Moreover, merger under the auspices of this, the smaller school, seen as the desegregation

"flagship," would surely be rejected, while merger in the reverse relation presents a formidable array of indescribably complex problems, including killing "desegregation goal."

SUMMARY

The Faculty and Staff of the Law Center recognized that their first responsibility is to serve the state's higher education goals, and with impeccable race-neutrality. This they have done. *The work done deserves to be left undisturbed and as a model, not a casualty, in far-sighted, voluntary, sincere and effective desegregation.*

APPENDIX C

MASTER PLAN

HIGHER EDUCATION

June, 1977

Dr. William Arceneaux
Louisiana Board of Regents
Suite 1530, One American Place
Baton Rouge, Louisiana 70825

Dear Dr. Arceneaux:

Submitted herewith is the report requested by the Louisiana Board of Regents on the most effective means of meeting Louisiana's need for legal education.

We trust that the report will be of assistance to you in your planning efforts.

Sincerely yours,

/s/ Peter Hay
PETER HAY
Associate Dean, School of Law
University of Illinois

/s/ Charles J. Meyers
CHARLES MEYERS
Dean, School of Law
Stanford University

Report to the Louisiana State Board of Regents on Legal Education in the State of Louisiana

(June, 1977)

Peter Hay
Associate Dean
College of Law
University of Illinois

and

Charles J. Meyers
Dean
Stanford Law School

I. Introduction

At the invitation of the Louisiana Board of Regents, we visited the four law schools of the state on May 30 and 31, 1977, spending one-half day at each school. Our charge was to consider whether legal education in Louisiana is efficient and effective in producing an adequate number of qualified lawyers to satisfy the needs of the people of Louisiana for legal services. In preparation for this task we read the following reports:

1. Commissioners' Conference on Professional Manpower Needs. "The Supply and Demand of Lawyers in Louisiana: Past, Present and Future Trends (1976)" (hereafter referred to as the Board of Regent's manpower study).
2. Louisiana Bar Examination Results 1969-70 to 1975-76.
3. Louisiana Attorney Statistics.
4. Applicants, Enrollments and Graduates for Louisiana Public and Independent Law Schools.
5. The Bulletins of the four Law Schools.
6. Miscellaneous maps.

At each school, Loyola, Tulane, LSU and Southern (the order in which we made our visits), we conferred with school officials, faculty members and students. Our guide for these visits was Ms. Sharon Beard, whose unfailing helpfulness and graciousness we wish to acknowledge here.

On the basis of the information obtained from the publications listed above and from our conversations at the four schools, we respectfully submit this report.

II. Do existing institutions provide an adequate supply of lawyers for Louisiana?

We conclude that the existing institutions provide a sufficient number of lawyers for the State of Louisiana and that, subject to the special needs addressed in Part III below, there is no need for expansion of educational facilities. Similarly, we conclude that there is no serious oversupply of lawyers so as to warrant a reduction in educational opportunities.

The 1976 manpower study of the Board of Regents documents that, in 1970, the ratio of lawyers to total population in Louisiana was 1:662, compared to a national average of 1:572. (Table XIV, at p. 36). For the southeastern region, this ratio compares favorably with Alabama, North and South Carolina (1:974, 1:1,095, 1:1,089, respectively), among others and is only slightly behind Texas (1:587). By 1976, the Louisiana ratio had dropped to 1:505 according to figures supplied by the Louisiana Bar Association. The Board of Regents' study projected (at p. 43) that the ratio would be 1:420 in 1980 and 1:305 in 1990, considering both expected production of new lawyers and separation from the profession of current members of the bar. Given the criteria for the projection, Louisiana's future ratios may thus be expected to bear the same relationship to national and regional ratios as does the present ratio.

In some respects, the expected future ratios may signal a future overabundance of lawyers, even if one also posits a modest increase in total population. Indeed, our interviews at some of the institutions visited disclosed that some law students experience difficulties even now in securing employment. Illustratively, placement figures at Loyola University Law School for 1976 show that of 187 graduating students, 161 found employment, while 26 did not, at least not within a reasonable time from graduation.

The possible present overabundance of law graduates, however slight, and the expected overabundance in the future, which the projection would signal, may not present an accurate picture in all respects. Especially with respect to the projected overabundance, we anticipate that law school enrollment will decline in Louisiana in about the same proportion as it is now beginning to decline nationally. In addition, and quite importantly, Louisiana's civil law system undoubtedly affects the projection in a way not recognized in the Board of Regents' manpower study which, in turn, was based in part on Chancellor Pye's earlier (and undifferentiated) study of the entire southwest region. Thus, while some Louisiana trained lawyers may be expected to seek employment in other state (for instance, 43 of 161 Loyola University graduates did so in 1976), lawyers from other states will not so readily move to Louisiana for lack of training in the civil law. The projection of a lawyer/population ratio is therefore very difficult, but the supply of lawyers may be expected to be less abundant than indicated in the studies mentioned. Nevertheless, it seems clear that even after adjustment of the projected ratio for the two reasons indicated, there is now, and will be in the future, a more than adequate supply of lawyers in Louisiana.

We are mindful of the fact that the geographic distribution of lawyers in Louisiana is uneven, for instance, that the ratios for Allen, Bossier, Franklin, Union, and

West Baton Rouge Parishes are most unfavorable (all in excess of 1:2,000). On the other hand, there is clearly an overabundance of lawyers, and consequently exceedingly limited further employment opportunities, in other parishes, most notably in Orleans Parish (1:201). This fact, however, does not support an argument in favor of new facilities for the training of lawyers, nor for the relocation of existing facilities. Additional facilities would add to the *state-wide* supply, and possible overabundance, of lawyers who would not necessarily locate themselves any differently geographically than at present. The same holds true with respect to relocation of existing educational facilities, since the place of law training within the state has no effect on the location sought by new lawyers for the practice of their profession.

While we are therefore convinced that no additional publicly supported educational facilities for the training of lawyers are needed, we recognize that the data on which we base our conclusion are projections, which cannot reflect the non-quantifiable factors mentioned, and that there could exist, from time to time, and however unlikely, a marginal need for additional lawyers. Such a contingency, however, does not warrant the creation of additional facilities: the start-up costs of a new facility in terms of physical plant and library facilities, which meet ABA/AALS standards, and operating expenses, including faculty salaries and library continuations and acquisitions, are prohibitive in terms of any cost/benefit analysis when the purpose is the education of that small margin of additional lawyers. Such a contingency should rather be met through utilization of existing facilities.

We assume that further expansion at Louisiana State University is not possible, nor perhaps educationally advisable, and that expansion of Southern University's Law School should be in accordance with the discussion in Part III, below. It is possible, however, to expand and utilize the programs now existing at Loyola University and

Tulane University. Their tuition levels ($2,200 in 1976/77 and $3,600 in 1977/78, respectively), however, place them out of reach for many qualified applicants who therefore have traditionally looked to public institutions. Should it become necessary to provide legal educational opportunities for a small number of additional students, the gap between tuition costs at public institutions and the two private law schools can be bridged, and their facilities utilized, by a system of capitation, from state funds, for qualified Louisiana residents wishing to attend these institutions (or out-of-state institutions on the basis of reciprocity). In economic terms, capitation is far less expensive as a means for providing limited additional educational facilities than the creation of a new state-supported and state-operated facility. We emphasize that we address this possibility as a contingency only and that we do not believe that it will arise. We reiterate our initial conclusion, as developed above, that there is no need for further educational facilities for legal training in Louisiana.

III. Education of Blacks for Law Practice

There are 1,085,227 blacks in Louisiana but only 176 black lawyers practicing in the state. (We do not deal with other minorities in this report because data are not available, but we have no reason to suppose that their situation differs materially from that of blacks, and it is the problem of the black minority which pervades legal education opportunity in this state).

A few statistics demonstrate that the problem of access to legal education by blacks is not improving. The black enrollment at Loyola is 5% (39 out of 796). Sixty percent of the black students there were admitted under a special admissions program which may not withstand the constitutional attack now pending in the U.S. Supreme Court (Bakke v. Board of Regents of the University of California). Moreover, the tuition at Loyola is currently

$2,200 per year, a sum beyond the means of most blacks. Similarly at Tulane, the black students compose 1.8% of the law student enrollment (10 out of 562). Tuition there in 1977-78 will be $3,600 per year. Again, it is unrealistic to expect significant numbers of black lawyers to be produced by that expensive and exclusive private institution.

LSU, though a public institution, has even fewer black students both absolutely and proportionately than Loyola and only a slightly higher percentage than Tulane. The LSU enrollment is approximately 1,000 law students, of which 2.5% (25) are black. The reason for this low number appears to be the belief of the law faculty that qualifications for law study are best determined by undergraduate grade point averages and scores on the Law School Aptitude Test—a belief shared by most legal educators. It would further appear that, by these criteria, very few of the black applicants to LSU rank as high as the white applicants and hence very few blacks are admitted. Unless LSU changes its admissions policy, which appears to be very unlikely, there is no realistic prospect of any significant number of black lawyers being produced from that school.

Accordingly, the one source of black lawyers for the people of Louisiana is Southern University Law School. Since the law school was established, it has graduated 274 students. The school has no information about 80 of them. One hundred fifty-three are members of the Louisiana bar and 41 are located in other states. As low as the number 153 is, the fact remains that Southern University has produced more black lawyers than the other three schools combined.

In sum, while the state-wide ratio of total population to lawyer is 505:1, the ratio of *black* population to *black* lawyer is 6,166:1—and even that dismal figure is largely accounted for by a single law school, Southern.

It is hardly necessary in this report to argue extensively the importance of producing more black lawyers in Louisiana. Law means access to political power both for the lawyer and his clients. The presence of blacks in the bar provides some assurance to other blacks that avenues of economic and social improvement are open and that black interests will be represented in the legal system. While the purpose of producing black lawyers is not solely to have them represent black clients, still many blacks prefer black lawyers and some blacks under some circumstances have difficulty in securing the services of white lawyers.

It is our conclusion, then, that it is essential for the well-being of all the people of Louisiana, not just the blacks, for Southern University Law School to remain in existence and to grow in size and strength. For reasons we will soon state, we also think that the school should remain part of the Southern University System, should retain its separate identification as a predominantly black institution and should remain in Baton Rouge.

The school should remain part of Southern University and retain its identity as a predominantly black institution because, we are convinced, the environment at Southern University comports with the black experience and contributes significantly to the education of the black student. Communication, and the ability to discern failure of communication, are greatly enhanced when the faculty and the students are products of the same or similar culture. Moreover, with a faculty-student ratio of 1:11, with special writing programs and with the availability of one-on-one tutorial instruction, the educational handicaps of black students can be overcome, or at least ameliorated.

The school should grow somewhat in size because of the need for more black lawyers, but the faculty-student ratio should be maintained at present levels to preserve

the individualized mode of instruction. The school should be strengthened and the education provided improved. The first step is to improve the plant and enlarge the library. The next step is to improve faculty salaries so that good instructors can be recruited and those now there retained. The third step is to improve financial aid for the students so that young people all over the state can afford a legal education if qualified to receive it. The final step, and indeed the crucial condition precedent to improving legal education at Southern, is to grant it stability by assuring it of a solid future. The Law School desparately needs assurance that it will receive the funds necessary to satisfy ABA standards and that it is, in the present mode of operation, an integral part of Southern University and of the system of legal education of the State of Louisiana.

We have also concluded that the Law School should not be moved to another location. Just as there are advantages to LSU from being located in the state capital there are advantages to Southern being there. Those advantages include proximity to state government, the availability of summer jobs in government, and most important of all, the present location in a predominantly black community as part of a predominantly black university. A move to any other location would deprive the law school of these benefits and would run the very high risk of converting the school to a predominantly white institution. The latter, in turn, would raise anew the problems of providing legal training for blacks observed at the other existing institutions.

IV. Conclusion

1. We believe that the four existing law schools, both public and private, provide an adequate supply of lawyers for the state of Louisiana, except for the problem addressed in Part III above and Point 4 below. Indeed, we foresee the possibility of a slight oversupply. We

therefore conclude that no additional educational facilities for the training of lawyers are needed.

2. The geographic imbalance in the location of lawyers within the state is not the result of the location of educational facilities and will not be ameliorated through the addition of new facilities or the relocation of existing ones.

3. Any demand for additional lawyers, while highly unlikely, should be met through utilization of the facilities of the private institutions. This should be done through a state-funded system of capitation as a far less expensive alternative to the establishment of new facilities.

4. Because we believe that there is an overwhelming need for an increase in the number of black lawyers in Louisiana and because we believe that Southern University Law School as presently conceived is the most viable means for satisfying that need, we recommend that the school retain its present racial identity and educational purpose, that it remain in its present location in order to retain that identity and purpose, and that it be given additional resources to enable it to do its job better.

CHAPTER 26. COLLEGES AND UNIVERSITIES

PART I. APPLICATION OF CHAPTER AND DEFINITIONS

La. R.S. § 17:3201. Application of Chapter

Except as otherwise specifically provided in this Chapter, the provisions of this Chapter shall apply in the same manner and to the same extent to the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the Board of Trustees for State Colleges and Universities, and any other board vested with the supervision and management of institutions of higher education hereafter created.

La. R.S. § 17:3202. Definitions

Unless the context otherwise clearly indicates, the following words shall have the meaning hereinafter ascribed to each:

(1) "Board" or "boards" means the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College and the Board of Trustees for State Colleges and Universities, or any of these boards.

(2) "College" means Delgado Vocational-Technical Junior College, and any other college now or hereafter under the supervision and management of one of the boards.

(3) "University system" or "system" means and refers to the colleges and universities under the jurisdiction of the management boards for higher education by or under authority of the Constitution of 1974.

PART II. MANAGEMENT BOARDS

La. R.S. § 17:3205. Qualifications of members of boards

No member of the faculty and no officer or employee of a university or college shall be eligible hereafter for appointment to any board which has authority for his/her appointment. However, this provision shall not prohibit the appointment of any person serving in an emeritus capacity to a board other than the board under which he served.

La. R.S. § 17:3206. Compensation of board members

Each member of the board shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the board or of a committee appointed by the board on which the member serves, or while on business for the board assigned by it, plus travel and other expenses incurred in the performance of official duties. Reimbursement of travel and expenses shall be in conformity with regulations governing such expenses of state officials.

La. R.S. § 17:3207. Executive committee of boards; powers and duties

A. For the prompt and efficient transaction of business each board may create from its membership an executive committee, which shall consist of the chairman and vice-chairman of the board and such additional number of members as the board shall determine. The members shall record the proceedings of each meeting of the executive committee.

B. A majority of the members of the executive committee shall constitute a quorum for the transaction of business; however, whenever the board has delegated to the executive committee full power to act with respect to a matter, affirmative action by a majority of the entire membership of the executive committee shall be required.

The executive committee shall meet monthly except in those months in which the board holds meetings.

C. The executive committee shall consider such matters as are referred to it by the board. It shall execute such orders and resolutions as shall be assigned to it at any meeting of the board. It also shall take such action as is necessary when an emergency requiring immediate action arises during an interim between board meetings. All acts of the executive committee shall be submitted to the board for ratification or rejection at its next meeting, except in matters where the board has delegated to the executive committee full power to act.

D. Each board may create and through its by-laws regulate the appointment, meetings, duties and functions of any additional standing or special committees which it deems necessary or expedient.

PART IV. ORGANIZATION

La. R.S. § 17:3301. Organization of university systems; colleges and universities

A. The organization of each university system and of each college and university within each system shall be determined by its board.

B. Each board shall appoint such administrative officers and other employees of the board as it deems necessary and designate their titles. In making its appointments, each board shall give consideration to the recommendations of the president or chief administrative officer and, in proper cases, to the head of any college or university affected by an appointment.

C. The compensation of these officers and employees shall be fixed by the board, and the officers so appointed shall serve at the pleasure of the board. Appointments of classified employees shall be in conformity with applicable civil service laws, rules and regulations.

D. Each board shall utilize the state department of education in order to coordinate and assist in its administrative duties and functions. Similarly, the state department of education shall utilize the resources of the boards.

La. R.S. § 17:3302. President of university system; appointment; salary

A. There shall be a president or chief administrative officer of each university system, who shall be the executive officer of the university system and shall serve as secretary to the board, executive committee and standing and special committees. He shall be appointed by and shall hold office at the pleasure of the board. His salary shall be fixed by and recorded in the proceedings of the board.

B. Except as herein otherwise provided and subject to the control and supervision of the board, each president or chief administrative office shall be responsible to the board for the conduct of the affairs of the university system. He shall execute and enforce all of the decisions, orders, rules and regulations of the board with respect to the conduct of the university system.

La. R.S. § 17:3303. Heads of colleges and universities

There shall be a head of each college and university, who shall be appointed by its board, taking into consideration the recommendations of the president or chief administrative officer of the system. The board shall adopt an appropriate title by which each head shall be designated. The head of each college and university shall serve at the pleasure of the board, at a salary fixed by the board.

La. R.S. § 17:3304. Faculty

A. Members of the instructional staff of each college and university having the rank of instructor or higher

and persons engaged in library, artistic, research and investigative positions of equal dignity, shall constitute the faculty of each college and university. The head of each college or university and its academic officers shall be members of the faculty.

B. The designation of faculty status by this Section shall not affect or change any provision of law affecting or relating to the retirement of any person, and the retirement of all faculty personnel shall be governed by applicable retirement or other applicable laws.

La. R.S. § 17:3305. Employment and compensation of faculty; administrative and professional staff; and classified employees

A. The head of each college and university shall appoint and fix the salaries and the duties of the members of the faculty and administrative and professional staff for the college or university he heads, subject to the recommendation of the president or chief administrative officer of the system and approval of the appropriate management board.

B. The head of each college and university, subject to applicable civil service laws, rules and regulations and approval by the president or chief administrative officer of the system and the appropriate board, shall appoint and fix the salaries and duties of the classified employees needed for the operation of the college or university he heads.

La. R.S. § 17:3306. Salary increases; restrictions

A. Beginning with the fall term of the 1984-1985 school year, and thereafter, all funds appropriated by the legislature for the purpose of granting salary increases, whether in a specified amount or in an amount determined by a percentage calculation, to all academic and administrative employees of the public institutions of

higher education over and above the salary paid to each such employee during the previous school year shall be paid by such institutions to each such employee as specified by the legislature, whether in a specified amount or in an amount determined by a percentage calculation.

B. No public institution of higher education or management board of any such institution shall divert any portion of the funds appropriated by the legislature as provided in Subsection A of this Section for any other purpose including but not limited to granting salary increases in amounts greater than those intended by the legislature to any such employee based on merit or for any other cause.

PART VI. POWERS AND DUTIES OF MANAGEMENT BOARDS

La. R.S. § 17:3351. General powers; duties and functions of college and university boards

A. Subject only to the powers of the Board of Regents specifically enumerated in Article VIII, Section 5(D) of the Constitution of the state of Louisiana of 1974, and as otherwise provided by law, each management board as a body corporate shall have authority to exercise all power to direct, control, supervise and manage the institutions of higher education under its control, including but not limited to the following:

(1) Sue and be sued, including the right to recover all debts owing to the board or any university or college under its management, and to retain legal counsel therefor.

(2) Actively seek and accept donations, bequests, or other forms of financial assistance for educational purposes from any public or private person or agency and to comply with rules and regulations governing grants from the federal government or any other person or agency

which are not in contravention of the constitution and laws.

(3) Receive and expend or allocate for expenditure to the institutions under its jurisdiction all monies appropriated or otherwise made available for purposes of the board and/or the institutions under its jurisdiction.

(4) Borrow money and issue notes, bonds or certificates of indebtedness for the same and pledge fees, rents and revenues to guarantee payment thereof, in accordance with law and with approval of the State Bond Commission.

(5) Determine the fees which shall be paid by students.

(6) Purchase land and purchase or construct buildings necessary for the use of the university system, subject to the approval of the Board of Regents and in accordance with applicable laws.

(7) Purchase equipment, properly maintain and make improvements to facilities necessary for the use of the university system, in accordance with applicable laws.

(8) Lease land or other property belonging to it or to any college or university within its system, in accordance with law.

(9) Sell, transfer or exchange land or other property not needed for university purposes, in accordance with law.

(10) Employ or approve the employment, fix or approve the salaries, and fix or approve the duties and functions of personnel for the board and the university system in accordance with the provisions of this Chapter.

(11) Formulate curricula and programs of study.

(12) Adopt, amend or repeal rules and regulations necessary or proper for the business of the board and for

the govenment of the colleges and universities comprising its system and for promoting their purposes.

(13) Adopt, amend or repeal rules and regulations for the government and discipline of students.

(14) Affiliate with any institution giving any special course of instruction, upon such terms as the board deems expedient, which terms may include the retention by such institution of the control of property, faculty and staff.

(15) Award certificates, confer degrees and issue diplomas certifying the same.

(16) Enter into contracts and agreement with other public agencies with respect to cooperative enterprises and undertakings relating to or associated with college or university purposes and programs, in accordance with applicable laws.

(17) Adopt academic calendars, which shall, among other things, make provision for an appropriate and reasonable number of days during which academic teaching personnel may, with necessary approval of appropriate university officials, be permitted to be absent from their duty posts; the time herein provided for shall be in lieu of annual leave granted unclassified state employees by R.S. 42:421. Provided, however, when an academic teaching employee covered by this Act retires, or whenever any such employee dies before retirement and while holding membership in any retirement system to which the state contributes in whole or in part, leaving a surviving spouse or dependent or both, who are entitled to benefits from the retirement system, the unused days shall be added to the employee's membership service in the same manner and to the same extent as if the employee had continued in state service until the time such number of unused days have elapsed, dating from the date of the employee's death.

(18) Perform such other functions as are necessary or incidental to the supervision and management of the university system it supervises and manages.

B. In addition to the powers and duties vested by Subsection A of this Section and any other applicable laws, each board, as soon as practicable, shall adopt:

(1) Bylaws setting forth the respective rights, duties and responsibilities of the board, the various administrative officers, and the faculty. These bylaws shall be specific in fixing responsibility and in describing lines of authority, without being so detailed as to encumber the machinery of government with undue formality. These bylaws may provide appropriate rules under which they may be amended from time to time.

(2) Rules and regulations which may provide for:

(a) A method of obtaining expression of faculty opinion when appointments are to be made to the offices of president, or head of a college or university, chief academic officer of a college or university, deans, directors, and heads or chairmen of departments.

(b) The establishment, award and continuance of fellowships, scholarships and all other forms of student aid. Such rules shall be so designed as to promote high standards of achievement and scholarship in the respective recipients and to insure the award and continuance of fellowships and scholarships solely upon the basis of merit, and other forms of student aid strictly upon the basis of necessity and merit.

(c) The administration of the various student loan funds and the granting and repayment of such loans.

(d) It shall be the further duty of the board to employ the proceeds of all donations, grants, sub-

scriptions and bequests to a university, or to any school, college or division, or in trust therefor, so as to effectuate the purposes and accord with the terms and conditions of such donations, grants, subscriptions and bequests.

(3) Policies and rules authorizing state colleges and universities to develop and conduct courses of study and curricula for inmates and personnel at state correctional institutions, pursuant to authorization by the Department of Public Safety and Corrections. The courses of study to be offered shall be developed by the college or university and approved by the governing board.

La. R.S. § 17:3352. Degrees

A. Each board shall confer degrees evidencing satisfactory completion of the principal courses of study and award diplomas in certification thereof at the colleges and universities under its jurisdiction. Each board may provide for the issuance of certificates to evidence satisfactory pursuance of studies not leading to a degree. Any board also may confer appropriate honorary degrees on any persons who have made substantial achievements in literary, artistic, scientific or technical fields of endeavor, but no degree, whether honorary or earned, shall be conferred except by vote of the board upon the recommendation of the president or chief administrative officer of the system, head of the college or university, and of the faculty of the appropriate college, school or division of a college or university.

B. All earned degrees and certificates conferred by each board shall be recognized by the courts and other officials of Louisiana as entitling the graduates holding such degrees to the same rights, privileges and immunities in the state of Louisiana as the diplomas, degrees or certificates of any other institution of learning.

La. R.S. § 17:3353. Cooperation with public agencies

A. Each board may enter into contracts and agreements with any public agency for the establishment of state or other public offices on the property and in the buildings of the university. It also can enter into contracts and agreements for joint construction, equipment, maintenance and financing of such buildings, and enter into contracts and agreements for the joint financing, supervision and conduct of cooperative enterprises and undertakings.

B. Any public agency is authorized to enter into contracts and agreements with any board for the purposes mentioned in this Section.

La. R.S. § 17:3354. Independent audit of financial transactions of a university system, college or university

A. Any board may from time to time cause to be made an independent audit of the financial transactions and accounts of its university system or of any college or university therein.

B. For the performance of an independent audit a board shall employ auditors who have no financial interest in the activities of its university system and who are under no contract of employment or retainer with the university system or any department or division of the state government for purposes other than independent audit. At least one responsible member of the auditing firm or group selected shall be qualified to practice as a certified public accountant.

C. Upon completion of an independent audit, a complete and detailed report of the findings and recommendations of the auditors shall be printed by the board and copies thereof transmitted to the governor and the legis-

lative auditor. The expense of the audit and report shall be borne by the university system out of appropriations.

D. Nothing herein contained shall be construed to eliminate the necessity of an audit required by law to be made by any public auditing agency.

La. R.S. § 17:3355. Contracts and purchases; livestock shows and rodeos; food services

A. All purchases, contracts and other business transactions shall be made on terms most favorable to the college or university for which the purchase is made, the contract is executed or to which the business transaction relates. All purchases made and contracts executed shall conform to applicable state laws relating to competitive bidding and the letting of contracts. The purchasing agent of each college and university shall be a deputy purchasing agent of the state central purchasing agency.

B. Notwithstanding the provisions of Subsection A of this Section, each board is hereby authorized and directed to advertise for bids, and to award to the lowest bidder, to contract for the h[illegible]g and conducting of livestock shows and rodeos.

C. Notwithstanding any other law to the contrary, the management board of any state college or university may after advertisement for and receipt of bids, contract with the lowest responsible bidder for food services, vending operations, and similar other services for a term not to exceed three years. Such a contract may include an option to renew the contract on a year to year basis, not to exceed a period of three years. No increase in a renewal contract price shall exceed the percentage of increase in the consumer's wholesale price index since the previous contract was entered. Such contracts, or renewals of contracts, shall also be approved by the state Division of Administration.

La. R.S. § 17:3356. Official action of boards; vote required

Notwithstanding any other provision of law to the contrary, all official actions of each board shall require the favorable vote of nine members.

PART VII. LEASES OF COLLEGE AND UNIVERSITY PROPERTIES

SUBPART A. LEASES TO ORGANIZATIONS

La. R.S. § 17:3361. Authority of boards to execute leases

A. Each board may grant leases of any portion or portions of the grounds or campus of any college or university or of other immovable property under its supervision and management, for a term not to exceed ninety-nine years for each lease, to any of the following:

(1) An organized national or local college or university fraternity or sorority.

(2) A religious, quasi-religious or benevolent organization or other nonprofit corporation or association.

(3) A military organization under the supervision of the state of Louisiana or of the United States of America.

(4) A public body.

(5) A private entity, provided such private entity shall be obligated under the terms of the lease agreement to construct improvements on the leased premises which will further the educational, scientific, research or public service functions of the board.

B. Each board may permit the lessees to erect, construct, and maintain thereon fraternity or sorority houses or homes, student centers, facilities for religious worship and instruction, armories, storehouses, and other structures. Contracts entered into by a private lessee for the

performance of work on the leased premises or the erection, construction, or maintenance of improvements on the leased premises shall not constitute public works contracts.

C. The land leased to any fraternity, sorority, religious or quasi-religious organization shall not exceed one acre.

D. The architectural plans for each house or other structure shall be approved by the board prior to construction on the leased grounds.

E. The provisions of R.S. 39:1643 and Part I of Chapter 10 of Title 41 of the Louisiana Revised Statutes of 1950 shall not be applicable to agreements authorized by this Part.

La. R.S. § 17:3362. Rules and regulations governing construction and maintenance of structures

A. Unless waived by written consent of the board, each board, before granting any lease or leases under the provisions of this Subpart, shall, either directly or through the head of the college or university, formulate and adopt such rules, regulations and requirements as it deems necessary or desirable, relative to the erection, construction and maintenance of fraternity or sorority houses, student centers, armories, storehouses or other structures. Any such rules, regulations and requirements shall be incoporated into the contract of lease as a condition precedent to the validity thereof.

B. Unless waived by written consent of the board, there shall be reserved to the board, whether or not stipulated in the lease, the right to require the removal of any fraternity or sorority house, student center, armory, storehouse or other structure erected under the provisions of this Subpart, in the event that the lessee fails, neglects or refuses to comply with the rules, regulations or requirements.

La. R.S. § 17:3364. Rules governing conduct and social activities of people in structures

Each board, either directly or through the president of the college or university, may adopt such rules or regulations as it deems necessary or desirable relative to the conduct and social activities of people in the houses or other structures erected on the leased grounds under the provisions of this Subpart and may amend these rules and regulations in such manner as is deemed to be in the best interest of the college or university. Unless waived by written consent of the board, failure of any lessee to conform to the rules and regulations shall be cause for the immediate termination of the lease and removal of the houses and structures at the option of the board, and the board shall be the sole judge of the rules and of conformity or nonconformity thereto.

La. R.S. § 17:3365. Transfer of lease; sublease; mortgage on structure and lease

A. With the prior written consent and approval of the board, all or any portion of the property or the improvement constructed thereon may be assigned or subleased under such terms and conditions as authorized by the board. The board may lease back all or any portion of the property or the improvements constructed thereon under such terms and conditions as authorized by the board. The term of any assignment, sublease or lease-back may equal but not exceed the term of the original lease.

B. Lessees may grant mortgages on the improvements erected on the leased premises and on the lease, but all such mortgages, as well as the rights of the mortgagees, shall be subject to the rules and regulations and to all the provisions of this Part.

La. R.S. § 17:3366. Assistance to college or university sponsored organizations in construction or maintenance of house

Each board may assist any college or university sponsored organization under the supervision of said college or university in the erection, construction or maintenance of facilities on the grounds of the university by unconditionally endorsing or guaranteeing any loan heretofore or hereafter made by any person for such purpose, and in such a manner, for such terms, and on such conditions as the board deems advisable. No such loan shall be so endorsed or guaranteed until the amount, terms and conditions of the loan have been approved by the State Bond Commission; however, this requirement shall not apply to loans endorsed or guaranteeed prior to the effective date of this Subpart, or to renewals of such loans.

SUBPART B. MINERAL LEASES

La. R.S. § 17:3367. Authority to execute mineral leases on college and university lands; term; use of revenues

A. Each board is authorized to execute and fix the terms and conditions of oil, gas and mineral leases upon any lands owned in whole or in part by the board or held by it for the use and benefit of any college or university under its supervision and management for the purpose of exploration, development, drilling and mining for oil, gas and other minerals in accordance with the provisions of Article IX, Sections 4 and 5 of the 1974 Constitution of the state of Louisiana.

B. Each lease sought to be executed under authority of this Section shall require the prior approval of the State Mineral Board.

C. Revenues from oil, gas, and mineral leases executed by each board as authorized in Subsection A of Section 3367, shall be allocated to the board which executed the lease, or its successor, and shall be used by the recipient board solely for the benefit of the college or university located on the leased properties. As to each such college or university, these revenues shall be in addition to any other revenues or funds appropriated or otherwise provided for or available to the college or university, and in no case shall any of these revenues be computed or considered by the Division of Administration or otherwise in determining the amounts to be appropriated to or for the college or university in the general appropriation act or any other act, and in no case shall these revenues, or any part of them, be computed or considered in determination of the allocation of funds under the Board of Regents appropriation formula for higher education.

The revenues received under this Subsection for a college or university first shall be used to alleviate safety hazards and other bona fide emergency conditions and make needed major repairs to buildings, grounds, streets, parking lots, purchase of land and upgrade utility systems of that institution and thereafter may be budgeted and used for new capital construction or capital acquisitions.

Capital projects costing one hundred thousand dollars or more shall be included in a capital outlay budget for submission to and action by the legislature.

In order to insure that the highest priority shall be given to the projects aimed at preserving and improving existing facilities, the Board of Regents shall recommend priorities for emergencies and major repairs required on the college and university campuses.

PART VIII. STUDENT AID

La. R.S. § 17:3371. Student loan funds

A. The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College is the official custodian and responsible for the administration of the diamond jubilee loan fund.

B. Each board is the official custodian and responsible for the administration of all funds created and held in trust for the purpose of making loans to needy students at any of the colleges and universities under its supervision and management. It shall have full power to sue for the recovery of any unpaid loans made from such funds.

PART IX. MISCELLANEOUS PROVISIONS

La. R.S. § 17:3381. Transportation for college students; parish school boards' authority to provide

The school boards of the several parishes may enter into contracts with individuals, partnerships or corporations domiciled in this state to furnish transportation at no cost to students attending any university, college or junior college under the supervision and management of the Board of Trustees for State Colleges and Universities, the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College or the Board of Supervisors of Southern University and Agricultural and Mechanical College, or may furnish such free transportation themselves, and pay for the same in the manner provided for defraying other expenses.

A. A city or parish school board may enter into contracts with individuals, partnerships, or corporations domiciled in this state to furnish transportation to students attending any university, college, or junior college under the supervision and management of the Board of Trustees for State Colleges and Universities, the Board

of Supervisors of the Louisiana State University and Agricultural and Mechanical College, or may furnish such transportation themselves, and pay for the same in the manner provided for defraying other expenses. Students receiving transportation may be charged a bus transportation fee in an amount not to exceed the actual cost of providing the transportation service. A school board shall establish such fees and shall provide for their collection.

B. A city or parish school board may adopt rules and regulations in accordance with this Section under which students other than qualified college students, such as exceptional or vocational-technical students, may be transported. However, the provision of transportation to such other students shall not result in the denial of transportation to an otherwise qualified college student nor result in the increase of the direct cost of buses and salaries and expenses of bus operators incurred by the school board in providing such transportation. Students receiving transportation may be charged a bus transportation fee in an amount sufficient to completely offset the actual cost of providing the transportation service. A school board shall establish such fees and shall provide for their collection.

La. R.S. § 17:3382. Teacher certification programs in instruction of elementary school French

A. The Board of Trustees for State Colleges and Universities, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Board of Supervisors of Southern University and Agricultural and Mechanical College are hereby required to direct institutions under their control which presently offer teacher certification programs in the instruction of high school French, to similarly offer teacher certification programs in the instruction of elementary school French.

B. The provisions of Subsection (A) shall not be construed to prevent an institution from offering teacher

certification in elementary school French even though said institution lacks a teacher certification program in high school French.

La. R.S. § 17:3383. State colleges and universities; capital outlay budget, exemption

Minor repairs or construction of buildings or other facilities costing less than one hundred fifty thousand dollars may be undertaken by or on the campus of a state college or university without being included in the capital outlay budget but shall be subject to the approval of the Board of Regents and the appropriate management board.

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with a advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 65. Preliminary Injunction.

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(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, *et al.*,
Defendants.

UNITED STATES' OBJECTIONS TO THE SPECIAL MASTER'S FINAL REPORT AND ORDER, ISSUED ON MAY 26, 1989

I. INTRODUCTION

On April 18, 1989, Special Master Paul Verkuil issued his Recommended Remedial Plan and requested that each party submit its response and any proposed amendments by April 30, 1989. The United States filed a response which, in general, stated that the proposed remedial Plan was constitutionally insufficient—because it was not a plan that "promises realistically to work, and promises realistically to work now".[1] Our response also suggested amendments which we believe would cure some of the deficiencies in the proposed plan. On May 26, 1989, the Special Master issued his Final Report, which mirrors, in most respects, the earlier proposed remedial plan. Thus, the United States continues to believe that the Special Master's proposed plan is constitutionally deficient and therefore should not be approved by this Court.

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[1] *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 439 (1968) (emphasis in original).

One fundamental—and we think fatal—deficiency in the Special Master's plan is that it is in most respects nothing more than a general outline for a yet to be established new single board to use as a guide in developing a final plan. Since the single board must be established, must organize, and then must develop a final desegregation plan, while simultaneously learning and carrying out all of the other duties a governing board must normally perform, the United States has little optimism that there will anytime soon be an actual detailed plan for this Court and the plaintiff parties "to assess the effectiveness of [the] plan in achieving desegregation." This Court and the plaintiffs will therefore be delayed in "having a plan which promises meaningful and immediate progress toward disestablishing state-imposed segregation." *Green* v. *New Kent County Board of Education*, 391 at 439.

In our view, having the special Master propose a plan which leaves a number of critical issues unresolved is not consistent with the role which we believe the Special Master was appointed to serve. Indeed, we believe that it is the development of detailed final plan "function" which the Special Master was appointed to perform and that this was the contribution to this case he needed to perform. The Special Master has a familiarity with the witness testimony and expertise that makes it easier for him to undertake this task than the Court (which, after all, could have drawn up an outline on its own), and the Special Master has an objecctivity and constitutional duty which will distinguish it from any new board, however distinguished. Moreover, without clear, particularized requirements, we fear this lawsuit will drag on literally into the next century. This will disserve the mandated aim of immediate desegregation and will also postpone the day when the administration of the State's higher education system will be the business of the State's educators—not its lawyers, the United States' lawyers, and this Court. The United States hopes that day would

be achieved no more than five years from now, but that will be impossible if a detailed plan is not adopted immediately. Assuming, for example, that a new board would take five months to complete a detail final plan, and assuming an expedited review by the parties and this Court to determine whether the plan is constitutional, it will take a minimum of six months before the plan could be implemented. Of course, if further litigation ensues when a final plan is proposed by the new single board, then there will be even greater delay in implementing a final plan. Thus, the need to have a final, court-approved plan *now* is clear. Appendix A shows in chart format the issues which were resolved and those which have been deferred until a later date. As the chart reveals, more issues were deferred than resolved.

Because, as stated above, the Special Master's Final Plan differed little from his draft proposal, we incorporate by reference our earlier Response (attached). We will dwell in this filing primarily on those parts of plan that were changed.[2]

II. DISCUSSION

A. The Proposed Plan Must Be Rejected Because It Lacks Specificity In A Number Of Critical Areas And Therefore Leaves Key Issues Unresolved

1. In light of the long and protracted history of this case, there is simply no justification at this late date for the Court and the plaintiffs to have before them merely a general outline, which obviously needs substantial further work and "filling-in." No one can reasonably argue that this is a plan that can be evaluated by the Court and plaintiffs to determine whether the proposed plan

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[2] Concerns which we raised in our original Response that the Special Master has satisfactorily addressed include: e.g., use of ACT scores.

"promises meaningful and immediate desegregation progress toward disestablishing state-imposed segregation."

The state defendants certainly have had sufficient time to develop and propose a constitutionally acceptable plan, but have failed to do so. A brief look at the history of this case shows the State's consistent refusal to submit an acceptable plan. This litigation originated from a determination by the Department of Health, Education and Welfare (HEW) in 1969 that the State of Louisiana was operating a system of public higher education that was not in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Pursuant to a referral from HEW, the Attorney General initiated suit against the State in 1974, and following extensive discovery the parties entered into a consent decree in 1981. During the six-year period between September 1981 to December 1987, the State failed fully to implement this decree, and in August 1988 this Court determined that the State had failed to achieve the desired goal of eradicating all vestiges of Louisiana's former racially dual system of higher education. The parties engaged in extensive settlement negotiations—which included active participation by the Governor—between October 1987 and March 1989, but these efforts were unsuccessful. After the Court issued its Order and Reasons on August 12, 1988, both the Court and the Special Master provided the state defendants several opportunities to submit a constitutionally acceptable plan. The state defendants submitted an incomplete plan with no commitment to implementing specific desegregation proposals. Between August 1988 and March 1989, the parties again engaged in extensive settlement discussions simultaneously with preparation for a remedial trial. Much was discussed and many meetings were held, but no final agreement was ever reached because the plaintiffs and defendants disagreed on a number of fundamental issues. Moreover, the day before the remedial trial was due to start, the parties again engaged in settle-

ment discussions, which included Governor Roemer serving as the principal negotiator for the state defendants. In spite of an apparent agreement on the difficult issues which separated the parties in past discussions, the state defendants on the eve of trial reneged on their commitments.

This history makes clear the state defendants have had several opportunities to develop a plan during the past eighteen months—indeed, the past fifteen years—and have consistently failed to do so. Thus, it was the state's failure to meet its constitutional duty to submit an acceptable plan and the parties inability to reach a negotiated plan that lead to the appointment of a special master. We believe it is this history showing the state's failure to meet its obligation which dictates against the Special Master delegating to the state defendants a further opportunity to develop an adequate plan.

2. The Final Report clearly shows that a number of issues—indeed many of the very issues over which the parties have vehemently disagreed—remain unresolved and therefore makes the plan incomplete. There is nothing in the record in this case which would lead this Court or any party to believe that a yet-to-be established single board will have any greater success in resolving these issues. Thus, if the plan proposed by the Special Master is approved, it will leave for a future time resolution of obvious disagreements among the parties. A few examples will illustrate this latter point.

Program Duplication. One of the issues over which there has been great discussion and strong disagreement is the proper approach to address program duplication as between the two institutions in Baton Rouge—Southern University (historically black) and Louisiana State University (historically white). Louisiana State University has indicated a willingness to engage in cooperative programs to address program duplication. Southern Univer-

sity has indicated a willingness to consider cooperative programs, reassigning programs between the two institutions, and assigning some programs exclusively to each institution. But because of this difference in philosophy and difference of views on what the law requires as to which technique should be used, the two institutions have never been able to agree on anything specific in this area. When the Governor appointed his Task Force, which was responsible for recommending a plan, the Governor and his Task Force could not develop final recommendations in this area. Indeed, the Task Force, which consisted of a distinguished group of educators, citizens and business people, "punted" the issue to another body—a suggested single board. It should be noted that each member of the Task Force was appointed by the Governor and no doubt understood the issues in this case and the need for final resolution. The Task Force was unable to develop a complete and final plan.

The Special Master's plan does not resolve the dispute as to how to address program duplication in Baton Rouge. In spite of the Special Master's finding that the "evidence in this case demonstrates that there is more duplication in Louisiana than is desirable from the point of educational efficiency" and his noting of the testimony of different witnesses as to how best to address program duplication (Final Report at pp. 93-95), the Special Master did not weigh the testimony of these witnesses and the factual record and determine which techniques would be effective in addressing duplication. Instead, he delegated to the single board "as one of its first missions the reduction of duplicated programs, especially where they involve proximate institutions." (Final Report at p. 95)

The difficult issue which must be resolved is: What is the legally appropriate technique for addressing program duplication in Baton Rouge? It was not resolved by the Special Master, and the single board, once it is established, can only recommend an approach—which will

be subject to review and comment by plaintiffs and review and approval by this Court.

Funding. The funding question is another issue over which the parties have had major disagreements, and which the Special Master failed to resolve. We believe that the Special Master was correct in determining that enhancement funding is necessary, but object to the fact that his Final Report contains no details on specific funding required by Grambling and Southern.

In his Final Report, the Special Master responds to the objection of the United States and of other parties regarding his failure to make specific findings on enhancement funding. He responds to those objections by concluding that the record "simply lacks the details and specifics necessary to make final determinations about enhancement dollars". (Final Report at p. 104, n. 32) Nevertheless, we believe that the Special Master was well aware of the disagreement among the parties regarding funding, and because of such disagreements it is reasonable to conclude that they will not "go away" by leaving them to be resolved by a single board. There are two specific failures by the Special Master in this regard. First, there is a fundamental disagreement between the plaintiffs and historically black institutions versus the other defendants over the issue of whether enhancement funding is necessary, and if it is, what is meant by enhancement funding. The Special Master resolved the first part of the issue—in determining that such funding is necessary—but he failed to address the equally important question of the specific amount of enhancement funding that is necessary to eliminate unconstitutional vestiges. Second, the Special Master could have set criteria and recommended a specific process for determining the level of funding—as suggested by the United States in its proposed plan—rather than leave this issue to be resolved by the defendants who heretofore have strongly disagreed with providing such funding, have been unwilling to com-

promise on this issue, and failed to fulfill their obligations, in this area, under the consent decree.

In sum, we believe that program duplication and enhancement funding involve legal issues which should have been resolved fully by the Special Master and said issues should not be left for a lay board to resolve.

B. The Special Master's Finding That A Single Board Is Warranted And Will Promote Desegregation Of The System Is Not Supported By The Record

1. While correctly acknowledging that the single board is not a panacea to desegregation, the plan treats it as one by not only embracing the scheme but exalting the single board as its centerpiece. Most troubling is the fact that all decisions concerning other provisions of the plan are held in abeyance pending the establishment of the single board. (Final Report, pp. 62-110.) There is no compelling reason for such a delay in implementation of a plan. This delay is not only inconsistent with the Court's directive concerning plan development, but also ensures that there will be no specific final plan until the single board completes its evaluation process, thus placing the parties and the Court in the same positions in which they stood in November 1988—reviewing and evaluating the desegregation proposal filed by the parties. In view of the fact that there have been serious disagreements among the State, the two predominantly black institutions, and the United States, it is unreasonable to expect that the single board will develop and offer specific proposals that will be acceptable to all parties. Consequently, the vaguness of the Final Report—and delegation to the new board of the hard decisions that must be made—ensure that further litigation will occur.

We remain skeptical that the record in this case can support the finding that a single board is warranted or that it will enhance desegregation. In all events, we adhere to our position that we do not object to the creation

of a single board if the Master and the Court conclude that the multi-board system is a vestige of past discrimination or that it is impeding successful desegregation. Without one or the other findings, the Court lacks the power to require a restructuring of the governance system within Louisiana.[3] Our position remains that a single board can be an appropriate *part* of a comprehensive desegregation plan. What is not acceptable is the Final Report's proposal that the single board be given the carte blanche discretion to resolve numerous key issues and therefore, in effect, to prepare the comprehensive desegregation plan itself.

The presumption that the creation of such a board is itself sufficient to ensure elimination of the vestiges of segregation of Louisiana's higher education system is without support in the record of this case and is without factual corroboration in the annals of higher education

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[3] This Court in its August 2, 1988 Order and Reasons (at p. 6) found that the four governing boards were racially identifiable, but apparently did not find that the present governance *structure* was violative of the Constitution. The racial identifiability of the governing boards could of course be eliminated without eliminating the governance boards. The Supreme Court has held that desegregation orders cannot exceed "fundamental limitations on the remedial powers of the federal courts to restructure the operation of local and state governmental entities. That is not plenary." *Hills* v. *Gautreaux*, 425 U.S. 284, 293 (1976). The judicial power contains the "inherent limitation" that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . ." *Milliken* v. *Bradley*, 433 U.S. 267 (1977). The remedy must be tailored to cure the condition that offends the Constitution. *Ibid.* See also *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 419-420 (1977); *Austin Independence School District* v. *United States*, 429 U.S. 990, 991 (1976) (Powell, J., concurring). In the circumstances extant here, the 1974 Louisiana Constitution reserves to the state senate and the people of Louisiana the authority to restructure higher education governance; an order requiring the proposed conversion would conflict with the State's constitutional provisions.

desegregation. The grounds cited for support of the proposal to establish the single board do not survive close scrutiny.

First, it is suggested that a single board is likely to be more efficient than the current governance structure and may lead, therefore, to reducing the extensive program duplications and "freeing up" of funds to aid in the desegregation process. References to efficiency are of course appealing, especially when the State seems to be short of money, but there is little reason to hope that the single board will lead to substantial economies. On the other hand, if such economies are realized there has been no commitment on the part of the State to utilize those economies to support the higher education desegregation process. Nor is there evidence that single board states *per se* are any more successful that multi-board states in reducing the program duplication that perpetuates segregation. There is, in particular, nothing in the record of this case indicating that any state has employed the single board concept as a means of remedying a constitutional violation.

Second, it is suggested that "factionalism and rivalries produced by the present organizational structure make it difficult to concentrate attention upon goals of either desegregation or efficiency", and it is implied that the single board structure will somehow not be susceptible to such pressures. Again, however, there is no basis for such an implication. See Testimony of Governor Roemer (Feb. 23, 1989 deposition), at page 85 line 10—page 88 line 4; Testimony of Dr. Kerry Davidson (Feb. 10, 1989 deposition), at page 97 line 24—page 99 line 12; *id.* at page 102 line 9—page 103 line 19; *id.* at page 109 line 23—page 110 line 5.

Finally, it is suggested that "The strongest argument of those favoring the present multi-board solution is that structure of higher education in Louisiana is irrelevant

to the goals of desegregation and therefore it ought not be changed. This is not an easy proposition to sustain." (Final Report at p. 48). But the position of the United States is simply that there are no compelling reasons nor is there any evidence to suggest that a single board structure is necessarily superior to a multi-board or decentralized governance structure in advancing desegreation—and that therefore the creation of single board does not diminish the need for the other necessary specifics of a desegregation plan. The record, including the testimony of each witness supporting the single board structure, is devoid of any factual evidence in which a single board has been established as a mechanism to advance higher education desegregation. Thus, for example, the Special Master recognized that Dr. McTarnaghan's testimony on the benefits of a single board related "more to efficiency than the question of desegregation" (Final Report's p. 49).

In sum, while a single board may be acceptable as a part of an overall desegregation plan, that plan must include much more, for a single board in itself will not ensure effective desegregation.

2. Even if the Special Master had made the proper finding to justify a single board as the appropriate desegregation approach, he should have allowed no delay in the appointment of the board. Under his draft recommended remedial plan, the Special Master allowed the Governor several months to appoint a board and gave the Governor additional time if he merely showed that such time was needed. Such an approach is clearly inconsistent with longstanding case law which requires that vestiges of segregation be eliminated "root and branch" and "*now*". Apparently in response to objections by the United States and Southern University, the Final Report acknowledges the Governor's commitment to nominate persons for the board within seven (7) days from the date the Court approves a final plan, though it allows thirty days (30)

to put the board in place and provides that the Court may appoint an interim board if the state defendants fail to act timely. Here again, however, the Special Master fails to realize that the primary reason why he should have appointed an interim board is because of the clear pattern of the state defendants' failures to act and failures to take adequate steps. Indeed, it was this very pattern which required that this Court to appoint a Special Master, and it was this very pattern that has caused this litigation to last more than fifteen years. In spite of this pattern of failing to act and strong opposition by the United States and Southern University, the Special Master failed to adopt a specific recommendation that would have allowed him to resolve this issue—that is, our recommendation that he immediately appoint an experienced interim board.

C. The Special Master's Recommendation to Appoint Ten White and Seven Blacks To The Single Board Fails To Ensure a Desegregated Body Which Will Correct What the State Has Failed To Do In Fifteen Years

The Special Master is incorrect in concluding that no party has proposed or suggested any race-neutral criteria that could ensure the protection of black interests as effectively as mandating a substantial black membership on the board. The United States recommended a process which the Special Master rejected for no reason other than the defendants' objection to it. In our previous response, we suggested that the Special Master appoint an interim single board from the members of the current four boards. Since the current boards include both black and white members who have been confirmed by the legislature, this process would have allowed the Special Master to constitute a desegregated board. Equally important, this process would have allowed him to select persons whom he believed "have the background, experience and

commitment to make the plan for racial integration work, wherever they are from." (Final Report, at pp. 55-56.) This process, as discussed above, would have also eliminated the need for the Governor and the legislature to adhere to an unreasonable timetable in putting the single board in place.

D. Issues Requiring Resolution Now

1. *Articulation Agreements*

The Special Master concluded that "the transfer function of community colleges must be emphasized". (Final Report, at p. 85.) The Master then concluded that drawn articulation agreements must exist between community colleges and four-year institutions to ensure that the transfer possibilities become a reality. It is the task of the new system to establish these agreements. But there is no logical reason why the current staff of the Board of Regents, Board of Trustees and appropriate officials of Southern University and Louisiana State University cannot develop articulation agreements *now*. Indeed, the record shows that the defendants relied upon Dr. James A. Caillier, President of Delgado Community College—the only desegregated institution in the Louisiana system—to demonstrate the need for a community college system, and Dr. Caillier agreed that there is a need for a transfer function as between community college and four-year institutions. (Final Report, pp. 81-85.) The Master relied upon Dr. Caillier in finding that the transfer function would be a necessity to foster desegregation of four-year institutions. Having relied upon Dr. Caillier and other experts knowledgeable of community colleges, and inasmuch as there are defendant officials who have expertise in operating community colleges, there is simply no justification for not requiring articulation agreements immediately—rather than asking a future board, which no doubt will have a partial or wholly new staff, to undertake this responsibility. This issue could have been *re-*

solved and the articulation agreements could *now* be before the Court and the parties for review in terms of their desegregation effectiveness. Instead, the Court and the parties must wait.

2. *Duplication Remedy—Program Transfer*

Most persons involved in this case would probably agree that the three most controversial and difficult issues in this case are: whether a single board should be appointed; whether enhancement funding should go to the historically black institutions and, if so, how much; and what are the effective means of remedying program duplication. The first two issues have been discussed above and those discussions will not be repeated here.

With respect to program duplication—an issue which has been debated greatly by the parties in this case and an issue upon which the army of experts in this case have disagreed—the Special Master concluded: "It is difficult on the evidence presented to conclude with confidence that program transfer will work. However, it is clear that duplication of programs can have a stultifying effect on desegregation. Therefore, it is imperative that the [new] board take as one of its first missions the reduction of duplicated programs, especially where they involve proximate institutions." (Final Report at p. 95).

It is clear that once again the Special Master did not resolve the difficult and controversial issue. Indeed, if the Court adopts the Special Master's recommendation concerning this issue, there will have been no progress made in resolving this issue during the past eighteen months—in spite of the fact that an independent person, the Special Master, was specifically appointed to resolve such issues. Having had assistance from many experts and numerous defendant officials from both historically white and black institutions, the fact that the Special Master made no specific findings in this area leaves the new board without specific guidance in resolving this issue.

Thus, it is reasonable to conclude that the new board will rerun the process—obtain the advice of defendant officials and still more experts. If the new board decides that program transfers should not be used, further litigation will no doubt ensue. And if the new board decides that program transfers *should* be used, it is reasonable —in light of the defendants (excluding Southern University, Grambling and Louisiana Tech, and Board of Trustees) stated to opposition to program transfer—to conclude that there will also be further litigation. Indeed, if the new board reflects the views of Louisiana State University-Baton Rouge (the designated flagship school) and the Governor—which is not unlikely, since the Governor will appoint the member of the new board—the new board *will* adopt a position in opposition to program transfer. Again, we think that failure to resolve the program transfer *now* can only ensure further litigation.

3. *Legal Education*

The Special Master found that Louisiana State University has failed to take adequate steps to desegregate its law schools. He also found that the two state-supported law schools continue to exist side-by-side in Baton Rouge and that LSU's Law School continues to be racially identifiable. The only remedial measures recommended by the Special Master, however, are: (1) than a ten percent (10%) goal of black enrollment be established for Louisiana (LSU); (2) that LSU offer substantial scholarships to blacks and undertake vigorous recruitment efforts aimed at black students; (3) that cooperative agreements be established; and (4) and that certain other measures be taken at some future time if LSU's black enrollment does not increase.

In light of the findings of the Special Master, there is no reason why specific measures—*e.g.*, a detailed student recruitment and affirmative action plan—were not required by the Special Master. If this had been done,

then the Court and the plaintiff could evaluate the effectiveness of such a plan. As it stands now, however, we must wait for a future date to see what specific steps will be recommended to desegregate the legal education programs.

4. *Lincoln Parish*

We are pleased that three of the defendants in this case—Louisiana Tech, Grambling, and the Board of Trustees—were able to overcome controversy and differences and therefore were able to reach an amicable resolution of program transfer issues. We are also pleased that the Special Master endorsed the Stipulation reached between Grambling and Louisiana Tech. There is one major problem, however, that the Special Master did not resolve and which will no doubt impede the effective implementation of the Stipulation. Grambling's ability to attract other-race students and to offer programs which will help it achieve this objective, as well as its ability to eliminate unconstitutional conditions related to its facilities and physical appearance, depend upon receiving enhancement funds. Yet, as discussed above, the Special Master's Final Report did not resolve this issue. Because the two institutions were able to reach the Stipulation, and because it presents a specific plan, we believe it was especially important for the Special Master to determine the funding necessary to implement the Stipulation. He did not and therefore final resolution of this part of the case will be delayed until a future day.

E. The Final Report Contains No Specific Provisions Showing How Other-Race Students, Faculty And Administrators Will Be Increased

In each proposed plan and pleading filed by the United States, we have urged the Court and the Special Master to require the defendant institution and governing boards to develop detailed recruitment plans for other-race stu-

dents, faculty, and administrators. We believe that the Special Master was correct in finding that there is a need for such plans. We object to the fact, however, that the Special Master did not require that detailed recruitment of plans be presented *now* so that they can be evaluated by the Court and plaintiffs for their desegregation effectiveness. Again, such a review must await a future date.

III. CONCLUSION

For the reasons set forth above the United States request that this Court reject the Special Master's Final Report and Proposed Order.

Respectfully submitted,

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Institutional Effectiveness in the Production of Black Baccalaureates

by

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A Report of Research Completed Under
A Grant From The
Southern Education Foundation
Atlanta, Georgia

1984

Chapter 1

INTRODUCTION

Historically, black colleges and universities have played a critical role in the undergraduate education of black Americans. The majority of these institutions, founded after the Civil War, were for nearly a century the only choice black students had who were interested in a college education. The civil rights movement of the 1960's and the subsequent federal legislation served to open the doors of predominantly white institutions to blacks—in a large number of cases for the first time—and many of them were recruited eagerly. As predominantly white institutions became accessible to black students in the late 1960's, the predominantly black institutions began to experience surges in enrollment that lasted for nearly a decade. This rise of interest in black undergraduates created widening opportunities for them to earn a baccalaureate degree.

But now, officials of many private black colleges say enrollments are slipping and there is serious concern about the future. To an extent, this enrollment slippage is a problem for public black colleges also. Black enrollment at predominantly white institutions has also peaked and fallen off. However, even though the number of black students attending college has more than tripled in the last twenty years, to about 1.3 million, the percentage at black colleges has declined from 82 percent in 1965 to around 28 percent in 1981.

FOREWORD

The Southern Education Foundation and the family philanthropies which preceded it have had a special and continuing interest in the education of black Americans for more than a hundred years. The Foundation has been concerned particularly with programs aimed at increasing and improving higher education opportunities for blacks in the South.

In April, 1974, the SEF Board of Directors established a special project, the Higher Education Program, to address issues which were surfacing as a result of the then *Adams* v. *Richardson* case. Under this higher education component, the Foundation supported coalitions formed by citizens to monitor state desegregation plans, sponsored conferences and workshops, published papers, monographs and documents, and awarded general grants which focused specifically on achieving equity in higher education in the ten states affected by the *Adams* case.

In September, 1978, the Higher Education Program proposed concentrating a major portion of its allocation on a Research Task Force which was formed to plan a research agenda for the Foundation and to commission research projects. This body of six educators has commissioned over 20 studies since its inception; this document is presented as part of the Higher Education Program Research Series. Other publications which are part of the series are listed at the end of this report and are available to the public for $5.00 each.

SEF has been able to expand its Higher Education Program as a result of receiving a grant in July, 1983 from the Ford Foundation; the publication of this report is made possible by the grant.

A list of other Foundation publications may be obtained by writing to the Southern Education Foundation.

Thank you.

SOUTHERN EDUCATION FOUNDATION
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May, 1984

Price: $5.00

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Of the 105 predominantly black colleges, about half are members of state university systems. Approximately 95 percent of these 105 institutions are in southern or border states. Non-black students at black private colleges make up about one percent of total enrollment, a ratio that has remained about the same over the past two decades. Non-black students are more in evidence at black public colleges.

From a financial standpoint, black public institutions seem to be in better condition than black private institutions. Also, they seem to be more successful in expanding their pool of students, principally by enrolling a greater ratio of white students. Traditionally white institutions have also expanded their pool of students by including blacks, particularly at public institutions.

But there has been an overall decline in the traditional 18-22 year old age cohort for all races as the post World War II baby boom group moves into their mid-to-late thirties. Thus, if only for economic reasons, institutions are looking to alternatives. As in the late sixties and seventies when the keynote was heavy recruitment of blacks and women, now the key is different age cohorts. Thus, a crisis is now being felt as institutions scramble for students within a situation of open access and institutional survival becomes partially contingent upon recruiting an undergraduate student population which is age 22 or older.

The overall trends suggest a difficult time for all undergraduate institutions, black institutions in particular, with private black colleges being the most heavily affected. Undergraduate institutions face concerns related to institutional change and institutional survival. As a consequence, black undergraduate students today must face a situation that includes declining enrollments, a reduction in financial aid programs, a reduction in student support services, a decrease in the size of the faculty,

a decrease in library volumes, and a real concern about educational quality.

At the institutional level, the concern is thus two-fold. On the one hand, how can policies be developed which help preserve the traditional black institutions within a social, political, and economic climate which puts them on the defensive. On the other hand, how can the successful models of educating black undergraduates be transferred to predominantly white institutions that are now serving large numbers of black students. An important concern in this regard is whether traditionally black institutions can be preserved in the process.

Black undergraduates have traditionally been concentrated in the fields of education, the social sciences, humanities, home economics, and physical education, and they have been less in evidence in business, engineering, physical sciences and the biological sciences. However, there was an increased interest in business careers by black undergraduates in 1972. There have been efforts in recent years to recruit more black undergraduates into the areas they traditionally have been underrepresented. In addition, contemporary and projected socioeconomic conditions have made more black students alert to the value of moving into the fields of business, engineering and the physical and biological sciences.

There is ample evidence (Claffey, 1981; Brazziel and Brazziel, 1980) that traditionally black colleges and universities have been more effective than their white counterparts in moving students through to the baccalaureate degree. It is the black colleges that have graduated 75 percent of all black Ph.D.'s, 75 percent of all black army officers, 80 percent of all black federal judges, and 85 percent of all black doctors (Jordan, 1975). Ambition and determination to succeed continue to be evident at the undergraduate level whereby nearly two-thirds of the men and more than two-thirds of the women who entered black colleges in 1972 planned to continue beyond

the bachelor's degree. In all colleges, somewhat over half of the men and only 43 percent of the women planned graduate work.

There are undoubtedly specific reasons why these institutions have done a consistently effective job of producing graduates. Some have attributed this effectiveness to the "philosophy of education" in evidence at traditionally black institutions. Following Blackwell (1981), reasons which can be seen as important in recruiting, retaining, and graduating black professionals include, numbers of black faculty, quality of financial aid, special admissions programs, retention programs, proportion of blacks in the state population. type of institution, black college in the state, litigation status and number of professional schools in the state. Many of these factors are undoubtedly important in recruiting, retaining, and graduating blacks with bachelor's degrees.

The intent of this study is to identify those factors which are most important to institutional effectiveness in the production of black baccalaureates. Some of these factors are quantitative, while others are more qualitative in nature.

An 'effectiveness quotient' has been developed as an overall measure of institutional effectiveness. This quotient serves as a dependent variable in the examination of a set of independent variables. The 'effectiveness quotient' is a function of total black enrollment and total black graduates in all institutions. Comparisons will be made by type of institution (public, private, TBI, TWI), size of the institution, and other variables in an effort to identify and describe factors which serve to increase or decrease institutional effectiveness.

Measures of input-output are also used in the model of analysis, thus suggesting a concern for institutional efficiency. The efficiency measure, which encompasses an input-output model (Parsons, 1956; Sower and Miller,

1964; Hart, 1974; Sower, 1976), allows the study to account for student preparation as an input indicator. This is important in that some of the traditionally black institutions enroll large numbers of educationally disadvantaged students because better prepared students are recruited by other institutions. Efficiency and effectiveness are thus affected by this situation. Yet, there is continuing evidence that traditionally black institutions are still effective in admitting, retaining, and graduating students whose educational opportunities have been limited. This study examines the reasons for this continuing success within an input-output model and through the use of an effectiveness quotient. Policies and practices are identified which are effective, and suggestions for replicating such policies and procedures in other institutions are made.

Chapter 2

RESEARCH REVIEW

Background

The research problem of concern in this study is the measurement of institutional effectiveness in undergraduate colleges and universities, and the attempt to identify and describe factors which contribute to institutional effectiveness in producing black baccalaureates. A further concern once the most salient factors in institutional effectiveness are identified and described is how these factors can be translated into policies and practices for other undergraduate institutions that have not traditionally served black students.

For Parsons (1956), an organization is seen as a system which 'produces' an identifiable something which can be utilized in some way by another system. Thus, the output of an organizational system is, for another system, an input. Parsons' general model has three anchor points: (1) the systems from which an organization receives its inputs or resources; (2) the values, structure, and norms which compose the organization as a system; and (3) those systems which use the output of an organization as an input. Effectiveness is measured by the extent to which inputs accomplish an organization's objectives and efficiency is measured by the relationship between inputs and outputs.

The study of organizations has evolved from a closed system (Taylor, 1911; Weber, 1947) approach to an open-system (Bernard, 1938; Selznick, 1949) approach, with a 'natural-system' (Roethlisberger and Dickson, 1939) perspective serving as an off-shoot of the open system. The closed-system approach assumed that the organizational problems of an enterprise can be analyzed and solved within the internal environment and that changes in the external environment could be accommodated within the existing organization. The open-system

approach stresses that organizations are not autonomous entities. Organizations are dependent on other organizations and social units for input and output, for the relative stability of these transactions and the assurance of their continuation into the future, and for the varied social and psychological benefits that the environment can offer the organization. The natural system approach is a variation on the open-system model. This approach assumes the system to be determined by nature, and it is our incomplete understanding which forces us to expect uncertainty. It is acknowledged that there is considerable interdependence with the environment.

The open-system approach is particularly relevant in any study of undergraduate institutions. A primary goal of these institutions is to produce students with baccalaureate degrees. To accomplish this goal, the institutions need input of students and resources from the broader environment (Thompson, 1967; Hart, 1974). This input needs to be consistent and predictable in order for these institutions to sustain themselves. The institutions themselves are characterized by particular norms, values and structure. The primary output of these institutions are students with baccalaureate degrees in various fields, which then becomes input for other institutional systems (e.g., graduate and professional schools, corporations, public agencies, etc.). The effectiveness of an undergraduate institution is a function of its ability to secure the necessary input (students, resources) and to produce an output (graduates with BA, BS degrees), through an educational process governed by the institutional system (norms, values, structure). In carrying out this function, there is a necessary interdependence with the institutional sphere (Hart, 1974), or the task environment (Thompson, 1967).

In terms of input, black students have been able to gain greater access to traditionally white institutions in recent time. However, the access issue persists in that

blacks are underrepresened in many traditionally white institutions. Following Blackwell (1981), access refers to the enrollment of black students in traditionally white institutions. Access can be further sub-divided into three levels. Level one is "weak or limited access," level two is "approximate access," and level three is "equal access." Blackwell measures these three levels of access in relation to the proportion of blacks in the state or national population. Blackwell also identifies five economic barriers to higher education which can affect the input. These barriers are, (1) high rates of unemployment among the black population, (2) inadequate income to support students in higher education programs, (3) low occupational status, (4) limited access to scholarships and fellowships, and (5) fear of excessive indebtedness resulting from loan programs. Given declining enrollments at most undergraduate institutions, the issues of access and economic barriers are important input measures for both TBIs and TWIs.

Studies of Desegregation in Higher Education: The Southern Education Foundation

Another input measure is federal support programs. Title III of the Higher Education Act of 1965 has provided almost 10 percent of the general expenditure funds for historically black colleges and universities in recent times. Fincher (1980) has shown that historically black colleges strongly support Title III as a crucial factor in the development of those institutions. About half of the institutions participating in Title III are TBIs. This program, as an input, is seen as strengthening the institutional system in such areas as institutional planning and management, faculty development, and curriculum improvements.

In an enrollment patterns study, William F. Brazziel and Marian E. Brazziel (1980) studied undergraduate enrollment patterns in 19 states affected by the *Adams*

litigation. Among their major findings were that black enrollment in all the public and private colleges and universities in the 19 states in 1976 and 1978 corresponded to Blackwell's notion of "approximate access"; total black enrollment represented about a 3.5 percent increase between 1976 and 1978, and a nearly 20 percent increase between 1974 and 1976; black students enrolled in TBIs declined by close to 5,000 between 1976 and 1978, while black enrollment in TWIs increased by about 6,000; the percentage of black students enrolled in two-year institutions increased from 36.7 in 1976 to 38.8 percent in 1978, and nationwide about 34 percent of all students are enrolled in two-year colleges. They also note that TBIs still award close to half of the approximately 60,000 undergraduate degrees earned by black students each year, even though TWIs enroll a greater number of black students than do TBIs.

In a study of the two-tier system in Florida, Charles M. Grigg (1980) found that there was a decline in the percentage and number of black undergraduates in all levels of the Florida higher education system, a decline in the number of both blacks and whites at Florida A & M University, that a higher proportion of whites earn associate of arts degrees and transfer to upper division studies in the state university system than do blacks, and that a higher proportion of whites than black community college transfers who enter the university system stay on to complete baccalaureate degrees.

A study by Anne Pruitt (1981) of employment data from 232 TWIs, found that employment gains by blacks were miniscule in the 1975-77 period. Community colleges led the way in hiring black facutly, and that flagship institutions tended to hire more blacks in non-faculty positions. The role of black faculty is particularly important in the recruitment, admittance, retention, and graduation of black professionals, according to Blackwell (1981). It is probably accurate to state that this im-

portance can be attached to black faculty in undergraduate institutions.

Thomas and Braddock (1981) found that higher scoring students of both sexes tend to matriculate at four-year colleges, selective colleges, private colleges, and predominantly white colleges. This study, which uses the student rather than the institution as the unit of analysis, states that although the predominantly black colleges continue to graduate a disproportionate percentage of black students, they presently account for only one-third of black enrollment.

Desegregation in Higher Education: Alexander Astin and Colleagues

Alexander Astin and Robert Panos (1969), in a study of vocational and educational development of college students, make use of an input-output research model where student input data, student output data, and college environmental data are the categories of information. Student input data are seen as the student's abilities, achievements, family background, educational and career plans. Student output data consist of the student's educational status and aspirations and career plans. College environmental data consist of administrative and environmental characteristics of the student's institutions. A total of 52 input measures and 28 output measures were developed based upon information provided by the students. Environmental measures were of two broad types: (1) the characteristics of the institution itself (its size, selectivity, permissiveness, etc.), and (2) special experiences within the college.

Among their findings are that TBIs tend to facilitate the desire to go on to graduate study and that black students are somewhat more likely to choose a career in health professions or in social sciences.

Astin's (1977) later work through the Cooperative Institutional Research Program (CIRP) was initiated at

the American Council on Education in 1966 and is now conducted jointly by ACE and UCLA. As Astin notes, the task of evaluating how students are affected by their college is composed of three major undertakings: (1) understanding the meaning of student change; (2) developing student outcome measures; and (3) designing the analysis of college impact.

Astin identified student outcomes as being either affective or cognitive where the data are either psychological or behavioral. In addition, Astin introduces a temporal dimension in that most colleges hope to produce long-term rather than short-term changes. The quality, or intensity, of the student's college experience can be measured in terms of student involvement in the college environment. High involvment refers to students who spend most of their time on campus, are committed to their studies, are actively involved in campus organizations, and interact frequently with faculty and other students. Astin further postulates a direct connection between involvement and persistence. He defines persisters as those students who complete a degree program within a specified time. Among full-time freshmen entering college for the first time, about half earn baccalaureate degrees within four years.

The most important environmental characteristic associated with college persistence, according to Astin, is living in a dormitory during the freshman year. Persistence is also enhanced by involvement in the campus environment, receiving major support from parents, and is reduced by attending a 2-year college and poor academic performance. The poorest persistence rates are also found in smallest (below 500) and moderately large (10,000 to 20,000) institutions. Further, black students, compared with non-blacks of similar ability, are more likely to persist and to enroll in graduate school, but they are less likely to graduate with honors.

Astin (1982) furthered his earlier work in his examination of minorities in American higher education. Among his key findings are that over the 1974-78 period, blacks in the 20-25 age range have a mean percentage high school dropout rate of 29.4 (N=6,560) compared to a mean percentage dropout rate of 20-25 year old whites of 17.8 (N=58,873). These figures reflect a potentially smaller proportion availability of black high school graduates for higher education. The mean percentages also indicate that blacks are nearly 1.7 times more likely to be high school dropouts than are whites.

On the other hand, Astin's data show a positive indicator for an output measure in relation to black students. In a comparison of bachelor's degree recipients and first-year graduate students, Astin's figures indicate that blacks have a higher ratio of first-year graduate school enrollments to bachelor's degrees received than do whites (.70 for blacks to .60 for whites) for 1975-76. These data imply that black graduates, as aggregate output of the institutional system, were more likely to go on to graduate education than were white graduates in 1975-76.

Turning again to input measures, Astin's data indicate that in relation to college admission test scores of high school seniors and anticipated major in college, white students achieve composite SAT scores that are generally 1.3 to 1.4 times higher than test scores of blacks. Astin's figures also indicate that as entering freshmen, blacks are overrepresented in only business and social sciences. Upon receipt of the baccalaureate degree, blacks are underrepresented in all fields. Severe problems of retention can be inferred from these data.

In relation to persistence and institutional type, black students are more likely to complete their degree at a four-year private college that is prestigious, selective, with generous educational and general expenditures per

student, with high tuition and average faculty salaries. Astin reports a negative correlation between persistence and the student-faculty ratio.

Further, Astin notes that without exception, blacks attending colleges in the Northeast get higher grades, are less likely to drop out, and are more likely to be satisfied with their undergraduate experience than blacks attending institutions in other regions.

Williams' (1982) work on blacks in higher education, found a positive correlation between persistence and attending a black college in a 1975-77 sample ($N=2,779$, $r=.14$, $p \leq .05$). She also found a positive correlation between persistence and prestige, selectivity, per-student expenditures, and tuition for 4-year college entrants. Further, past research has indicated that support from scholarships and grants has a positive impact on persistence, whereas reliance on loans has a negative impact. In sum, Williams finds that blacks are most likely to persist to degree completion if they come from a relatively high socio-economic background, attend an integrated high school, make good grades in high school, perform well on aptitude tests, and develop good study habits. Blacks have a better chance of completing the degree if they initially enroll in four-year colleges or universities, especially in high quality institutions located in the Northeast region of the United States.

McNamara and Scherrei (1982) examined college women pursuing careers in science, mathematics and engineering in the 1970s, by race. Among blacks, females were more likely than males to report having "A" averages in high school. Black males and females were equally likely to report they were very well-prepared in mathematics and science in high school in 1975 and 1977. Black females were more likely than males to attend a university as college freshmen. However, black men were a little more likely than women to major in

science. Half of black women who graduated with a major in physical sciences or mathematics had plans to major in this area at entry.

Black Students on White Campuses

Gamson and Arce (1978) trace the implications of increasing numbers of black students on white campuses, particularly in the post-1967 period. Their approach describes the federal role, partciularly in promoting legal desegregation of higher education, and its involvement in financial aid programs. The passage of the Higher Education Act in 1965, with provisions for a series of new financial aid programs, greatly accelerated the federal government's encouragement of equal access to higher education. The Higher Education Amendments revised some of the programs of the 1965 Act and added the Basic Educational Opportunity Grants (BEOG). Taking the philosophy and approach of the G.I. Bill, the new grants were based on the concept of entitlement. Gamson and Arce go on to examine historical trend of black enrollment in higher education, white institution's responses to black students, faculty and administrative response to black students, and student response.

Peterson (1978) examines the environmental context affecting colleges and universities. These factors include local community characteristics and groups, competitive conditions, federal legislation and executive or judicial rulings, state legislation or state agency direction, state and federal funding, and other institutional support groups. Of the 13 schools examined in the larger study of which Peterson's work is part, all had external environments that were supportive of increased black enrollments or favorable internal predisposing factors.

Peterson and Davenport (1978) in examining institutional attractiveness for black students, found that the mean score for black students exceeded the mean score

for all students on only the measures of good academic reputation of the institution and the availability of a good program in preferred major. On the other ten measures of institutional attractiveness, the mean score for black students was less than that for all students.

Blackburn and Peterson (1978) examined administrative and faculty responses to an increase of black students. Their examination of factor loadings with zero-order correlations among the indices expressed an institutional ideology which asserts that there should be a high institutional priority on black issues, an emphasis on more academic support programs, and a commitment to affirmative action. In general, the authors found that administrators and faculty in the sample of 13 colleges and universities demonstrated essentially the same moderate social values, with administrators expressing stronger or more favorable views about minority issues.

Mingle (1978) in an examination of four universities on faculty and departmental response patterns found that faculty holding universal values about standards tended to view the long-range impact of minorities in negative terms ($r=-.35$). They also tended to be less inclined to assign their institution responsibility on race issues ($r=.29$). Universalism was also related to a belief that blacks should become fully integrated into the culture and organization of the institution ($r=.37$).

Gamson (1978) in an examination of racial climate at four universities found high levels of responsiveness to black students. The institution's responses to black students were related to an overall climate of concern with, and commitment to, dealing with racial issues.

Persistence, Attrition and Testing

A 1980 research report by the Institute for Study of Educational Policy analyzed student persistence and attrition rates, by race. The study also examined the rela-

tionship of Federal funds for black and non-black institutions. Eckland and Henderson (1981) found that independent of race, social class, or ability, men were somewhat more likely to go to college than women. However, women were more likely to graduate on schedule. Men were more likely to return if they dropped out. Gordon's 1976 study using linear correlations between high school percentile rank and test scores among black students concludes that the results raise the question of how ACT and SAT scores should be used in the admission process.

Morris, et al. (1981), in a study of the status of black Americans in higher education from 1970 to 1979, found a negative correlation between the level of selectivity and lack of progress for blacks. An Institute for Services to Education (1979) study examined the correlation between standardized college admissions tests and life achievements of students attending historically black colleges. The findings show that despite low initial scores on standardized tests, study participants were able to achieve considerable educational attainment and career success. Miller, et al, (1977) in a study of the factors affecting the admission and enrollment of minority students at the twelve state universities in Ohio found that major factors affecting enrollment are geographic location, and the strength of the tutoring, counseling, and social, academic, and cultural programming services available to minority students.

Pfeifer and Sedlacek (1970), in a study of academic predictors for black and white students at the University of Maryland, found that SAT scores were correlated with grades about as highly for whites as for blacks. However, high school grades were not a valid predictor for black males. Coleman (1974) in a study examining the relationship between the level of achievement motivation and grades in psychology showed no correlation between the test scores on the Personality Questionnaire and grades in psychology courses. Coleman's sample consisted

of black males and females from lower social class backgrounds. Reichard and Hengstler (1981) in a study of black and white students in a predominantly white university prior to entrance, while enrolled, and within one year after degree completion found a greater need for financial assistance on the part of blacks. Black students generally scored lower on SATs, and this difference in aptitude and achievement remained throughout the college years as evidenced by the differences in GPA for graduating seniors.

Institutional Issues

Williams, Gooden, et al. (1982) in a study of admissions criteria and the minority student found that four-year historically white colleges rank GPA, class rank, high school curriculum, academic curriculum and test scores as the top five criteria for admission. Public universities ranked the top five as GPA, academic curriculum, class rank, high school curriculum, and test scores, while private non-sectarian institutions ranked GPA, academic curriculum, high school curriculum, class rank and motivation. Public colleges viewed the top five criteria as GPA, class rank, high school curriculum, test scores, and academic curriculum. Black colleges (public and private) ranked the top five criteria as GPA, test scores, class rank, academic curriculum and high school curriculum. Private universities appear more likely to identify minorities for admissions purposes. However, minority students will continue to fare less well when evaluated by traditional measures, at least in the immediate future. Black colleges have led the way in admitting students who were deemed inadmissable to predominantly white colleges and developing them through supportive efforts into highly competitive college graduates.

Blackwell (1982) reminds us that at all levels of education, black Americans registered a more rapid rate of

educational attainment than did white Americans. However, in 1979, the National Advisory Committee on Black Higher Education and Black Colleges and Universities reported that in 1977 there were more black dropouts between the ages of 18 and 24 than there were black college enrollees that year. As recently as 1979, only 13 percent of the most able black students as measured by performance on the SAT were enrolled in black institutions.

In his study of blacks in graduate and professional schools, Blackwell (1981) reminds us that despite gains made during the 1970s, there are danger signs ahead. These danger signs include declining or stabilizing black undergraduate enrollment as potential input to graduate and professional schools, a decrease in commitment to aggressive recruitment strategies, fall-out from the *Bakke* case which encourages some institutions to reduce their programs for minority students and to increase the weights assigned to objective admissions criteria when confronted with difficult choices, and opposition to minority student programs by the public and by influential special interest groups. Blackwell makes a number of recommendations aimed at enhancing the mainstreaming of outsiders into graduate and professional schools. A key ingredient in the mix of recommendations is the need to admit, retain, and graduate more black undergraduates, some number of which will then go on to graduate and professional schools, and then on to careers in the professions.

Willie and MacLeish (1978), in a study of priorities of presidents of black colleges, found that educational priorities ranked first, financial priorities second, and management priorities third. The educational priorities dealt with matters such as curriculum reform, faculty development, improving the system for advising students, innovations in career education, and undergraduate concentration in the professions. In a study of financing

the black college, Jones and Weathersby (1978) found that in 1970 state and local governments accounted for 69.7 percent of the educational and general income at black public institutions. In 1975, this proportion shrank to 56.9 percent. In contrast, state and local government accounted for only 3.6 percent of the income for operations at independent institutions in 1975, and only 1.5 percent in 1970. Tuition and fees, on the other hand, are an important source of funds for the independent sector and less important for the public sector. The state-assisted institutions spend, on the average, about twice as much as the independent colleges. On a per-student basis, the independent sector spends about one-third more per student on educational and general expenditures. Public black colleges spend a greater percentage of their funds on instruction than do those in the private sector. Bowles and DeCosta (1971) in a study of black higher education concluded that the black colleges are underpricing their services, which is to say they are charging insufficient tuition—especially the private colleges.

In on-going research on the dropout rate among blacks in graduate and professional schools, Allen (1983) offers findings which have relevance to the concerns of this study. Allen's research at six predominantly white universities suggests that the campus climate and support system may be critical. He has identified three factors contributing to the attrition of blacks. These are faculty relations, social isolation, and the lack of adequate support services, such as financial aid.

Philosophy of Education

Finally, of importance in persistence among black students and institutional effectiveness are the norms and values of the institution. Norms and values of an undergraduate institution can perhaps be described as the philosophy of education of a particular institution. Spencer

(1979) describes three philosophies of education. These are the philosophy of merit which holds the degree to signify an intellectual achievement, the philosophy of contract which considers the degree to be a reward for effort, and the philosophy of right, which considers the degree to be one of the rights of citizenship associated with the welfare state. It has been argued that BEOG grants, as a form of entitlement, have aided the shift of the philosophy of education to a philosophy of right. Astin (1982) states that public higher education has evolved from a limited low-cost, meritocratic system to one of open and potentially unlimited access for all citizens regardless of their ability to pay or their previous educational achievement. This change in federal policy—from the focus on "all who are able" in the National Defense Education Act of 1958 to the concerns for "all who can benefit" in the Higher Education Act of 1965—led eventually to the entitlement provisions of the Pell Grant program established by the Education Amendments of 1972. Since 1965, federal policy has been primarily concerned with underwriting the individual costs of access and participation.

Public policy generally has focused on the issue of access to any post-secondary institution, assuming approximately equal effects and benefits of college attendance (Astin, 1982). Indeed, the state's interest in, and responsibility for educational access and opportunity may well conflict with traditional notions of academic quality, as represented by the philosophy of merit. The resolution of this dilemma of equal access and educational quality is just now becoming the subject of intense debate in higher education as reflected in efforts to raise minimal academic standards for admission in various states such as California and Massachusetts.

Data Collection

The data collection phase consists of three parts. Part one consists of data gathered on total undergraduate en-

rollment by race, total earned degrees by race, and available SAT information by race, for the 1972-73 - 1980-81 period. Enrollment and earned degree information was compiled for four-year institutions from published figures released by the U.S. Department of Education, Office for Civil Rights. Due to reporting requirements for institutions by race, more detailed and accurate figures are available for the study years 1976-77, 1978-79, and 1980-81, than for the study years 1972-73 and 1974-75. This caveat should be borne in mind in any analysis and interpretation of the data. Other data sources used in this phase include published figures from the National Center for Education Statistics (NCES), the *1981-82 Fact Book for Academic Administrators* published by the American Council on Education (ACE), *Trends and Patterns: A Study of Enrollment in Higher Education, 1970-79*, published by ACE and NCES, and Blackwell's (1982) article on "Demographics of Desegregation." SAT data by race were compiled from the report on *Profiles, College-Bound Seniors, 1981*, published by the Admissions Testing Program of the College Board, and from available figures published by Astin in various places.

Once enrollment and earned degrees figures were compiled by race, for each available study year an effectiveness quotient (EQ) score was calculated. Comparisons were then made for each study year, by racial group, as to the effectiveness of the universe of four-year undergraduate institutions in the production of baccalaureates. This aggregate index of effectiveness was a first step in determining the performance level of the universe of institutions over the study years in the production of students with bachelor's degrees. The aggregate EQ index also served at this point to indicate levels of persistence and problems in retention among different racial groups at the undergraduate level.

Part two consisted of selecting a sample of traditionally white institutions (TWIs) and traditionally black

institutions (TBIs) in order to gather more detailed institutional data. The sampling plan was of a stratified design. Utilizing the Cooperative Institutional Research Program (CIRP) publications, *The American Freshman: National Norms for Fall 1980,* and for 1978, 1976, 1974, and 1972, which each contains a listing of cooperating institutions as a starting point, a sample for each study year was drawn using a random number table. This design yielded a sample consisting of 84 TWIs and 18 TBIs for each study year. The sample of TWIs was thus 4 percent of the universe, while the sample of TBIs was 17 percent of the universe. This design represents an oversampling of TBIs.

Once the sample was drawn, and a list of specific institutions (both TWIs and TBIs) was in hand, the U.S. Department of Education, Office for Civil Rights publications were consulted to derive enrollment and earned degree figures for each institution in the sample for each available study year. A spread sheet was then created for each available study year with figures for each institution in the sample. Columns in the spread sheet contained the following information for each institution.

(1) Number of black students enrolled;

(2) Number of earned degrees by black students;

(3) Effectiveness quotient (EQ) score;

(4) Plus (+) or minus (—) sign, indicating whether the institution had an EQ score above or below the national norm EQ for black students;

(5) How the state ranked in terms of:

a) Relative cost of higher education;

b) Appropriations per student;

c) Adjusted appropriations per student;

d) Change in appropriations per student over 2-year period;

(6) Percent black student population in the institution;

(7) Percent black population in the state;

(8) Using (6) and (7) above, a determination of level of access, i.e., 'weak, limited', or 'approximate,' or 'equal,' from Blackwell (1981);

(9) Median black income in the state;

(10) Size of school in terms of total student population;

(11) Litigation status, i.e., whether or not the state is an *Adams* state;

(12) Presence or absence of a special admissions program;

(13) Presence or absence of a retention program.

From the spread sheets for each available study year, a top ten was calculated for all institutions with the highest EQ scores. Next a top five for TBIs was determined using the same method. Then, the number and percent of TWIs and TBIs above and below the national norm EQ was determined. Comparisons were then made between the institutional sample in Part Two and the universe of undergraduate institutions in Part One.

Next a research review was conducted in the attempt to identify at least twenty (20) studies that examined persistence among black undergraduates and/or institutional effectiveness among undergraduate colleges and universities. This review was organized along the lines of the input-output model of analysis used in the research.

A total of thirty-one (31) studies are included in the final research review out of over 100 studies initially identified for possible inclusion. Some of these 31 studies included in the research review overlap in the three components of the input-system-output model of analysis.

Those studies included in the research review are denoted by an asterisk (*) in the References section at the end of this report. Among the studies included in the research review, fifteen (15) contain findings which can be grouped under the Input portion of the model. Twenty-six (26) contain findings which can be grouped under the System component; while five (5) contain results grouped under the Output component.

Data Reduction and Analysis

Using factor analysis techniques, correlation coefficients, multiple regression techniques, and a modified version of meta-analysis, the strongest factors in persistence are identified. These factors serve as the cause, or independent variable, while the effectiveness measure (EQ), is the effect, or dependent variable. The institutions in the sample of Part Two are organized according to their EQ score, and percentiles are created which serve to group high, medium, and low index institutions. The persistence factors are grouped in three categories. These categories are either institutional factors, individual factors, or contextual factors. Further, the factors are defined in terms of their malleability.

Characteristics of the most effective institutions (i.e., top ten for all, top five for TBIs) are then compared with the presence or absence of those institutional and contextual factors which are deemed most salient in persistence. Taking off from the most salient individual factors, an examination is then made of the type of student most likely to persist to degree completion.

This phase of the research concludes with the testing of ten (10) null hypotheses that relate to institutional effectiveness and persistence. These hypotheses are the following:

(1) There is no difference in effectiveness between TBIs and TWIs in producing black students with bachelor's degrees.

(2) There is no difference in effectiveness between public and private colleges and universities.

(3) There is no difference in effectiveness between public TBIs and private TBIs.

(4) There is no difference in the percent of black faculty between colleges and universities that are more effective in graduating black students than those that are less effective.

(5) There is no difference between more effective and less effective institutions in the likelihood of having special admissions programs.

(6) There is no difference between more effective and less effective institutions in the likelihood of having a retention program.

(7) There is no difference between more effective and less effective institutions in the quality of financial aid.

(8) SAT scores do not have a significant relationship to institutional effectiveness.

(9) Student-faculty ratios have no relationship to institutional effectiveness.

(10) Per-student expenditures have no relationship to institutional effectiveness.

The development and use of the effectiveness quotient should be considered exploratory. That is, in addition to answering particular questions about institutional effectiveness and salient contributing factors, the effectiveness quotient will also raise questions that cannot be answered within the scope of this research project. In that sense, it is hoped that this measure and the methodology used in this research serves a heuristic function.

The research synthesis taken from studies identified earlier in this chapter yielded correlation coefficients,

significance levels and sample sizes. For measures of persistence and effectiveness, correlations were averaged across the relevant studies. These values were then correlated with the combined EQ scores for the study years 1976-77, 1978-79, and 1980-81, and can be found in Tables 4.14, 4.15, and 4.16. Again, the EQ scores represent institutional measures of performance in graduating black students with BA and BS degrees. The total number of institutional cases for these three study years is 276, of which 47 are TBIs. Study years 1972-73 and 1974-75 were not included in this analysis due to the weakness of the data on earned degrees by institution. As noted earlier, thirty-one (31) research studies were used in the synthesis.

The factor analysis served to categories salient factors into three groupings: institutional, contextual, and individual. Multiple regression techniques were then used to determine the variables under each of these factors which contributed most strongly to persistence and effectiveness. Again, the EQ score serves as the proxy variable in measuring institutional effectiveness and performance, and serves as a standard of persistence.

Meta-Analysis

There are three generally accepted indices of overall treatment impact in synthesizing research outcomes. These indices include vote counitng, averaging effect sizes, and combining significance tests. The index of averaging effect sizes is used in an attempt to ascertain the relative impact of institutional, contextual, and individual factors upon persistence and effectiveness. The goal of this phase of the analysis is to build upon the findings of the correlational studies and the multiple regression techniques in order to attempt to rank those factors considered most salient in contributing to institutional effectiveness. This three-pronged method of analysis is undertaken in a step-by-step fashion with the

goal of ranking the factors in that policy studies are strengthened through an attempt to identify and rank factors of concern around a particular issue of public policy. The research goal and related policy objective is to attempt to determine whether institutional, contextual, or individual factors are most likely to enhance institutional effectiveness in the production of black baccalaureates.

As with the use of the EQ measure, this particular approach to data reduction and analysis should be considered exploratory. It is hoped this approach to analyzing institutional effectiveness can serve a heuristic function for other educational researchers interested in the question of factors contributing to the production of black baccalaureates.

The report concludes with a section on policy implications. This section examines "what makes effective institutions effective" from a policy standpoint, and what it is that other colleges and universities can adopt for blacks within their particular institutional context. That is, some factors which contribute to institutional effectiveness are more malleable than others in terms of policy implications. For those more malleable factors, how can less effective institutions enhance these factors within their own context, and what are costs and benefits associated with such an approach?

Chapter 3

INSTITUTIONAL EFFECTIVENESS IN HIGHER EDUCATION

The aggregate undergraduate student enrollment and earned degree figures for the study years are used to arrive at an overall effectiveness measure. These 'national norms' of institutional effectiveness reflect the performance level of higher education during the decade of the 1970s. They also indicate degrees of persistence on the part of undergraduate students within the institution of higher education during the decade under consideration in this research.

More detailed undergraduate enrollment and earned degree data exist for the academic years 1976-77, 1978-79, and 1980-81, than for the academic years 1972-73 and 1974-75. For the latter two academic years, estimation procedures are used to arrive at figures for earned degrees by race. For all five academic years it is possible to derive and index of effectiveness by race. However, this index is more accurate for 1976-77, 1978-79, and 1980-81, due to the greater detail in the reporting requirements imposed on colleges and universities for these academic years in relation to earned degrees by race.

The aggregate effectiveness quotient, or the national norm of effectiveness, provides data as to the performance level of higher education in terms of graduating black students. In addition, this national norm provides a comparison by race (with a particular focus on blacks, whites, and Asians) of the performance level achieved by undergraduate institutions over the 1972-73 to 1980-81 period.

The national norm of effectiveness can be used as a benchmark in determining whether a particular college or university in the institutional sample of TWI or TBI is above or below the norm. It is also possible to deter-

mine the number and percent of all institutions, as well as TBIs, which fall above or below the norm for a given academic year. Comparisons can then be made between TBIs and TWIs in order to ascertain which type of institution has been more effective in a given academic year, and over the decade under study.

This section focuses on institutional effectiveness starting with the total population of undergraduate institutions and then comparing this universe with a sample of undergraduate institutions. This sample is drawn from the universe of nearly 2000 four-year colleges and universities, of which 105 are TBIs. The institutional sample was drawn in such a way as to yield a sample size consisting of eighty-four (84) TWIs and eighteen (18) TBIs.

Examining the national norms of effectiveness by race over the 1972-73 to 1980-81 period indicates a trend of declining institutional effectiveness in relation to blacks, whites, and Asians. As Table 3.1 shows, for all three

Table 3.1: Effectiveness Quotient (EQ) Scores for B.A., B.S. Degrees by Selected Race, Selected Years and Total —All Institutions Combined

Year	Black	White	Asian	National Norm
1972-73[a]	.10	.14	.12	.13
1974-75[a]	.08	.13	.12	.12
1976-77[b]	.07	.12	.09	.11
1978-79[b]	.10	.13	.11	.13
1980-81[b]	.07	.11	.09	.08

[a] Detailed racial data on earned degrees by race not available. Numbers are based on estimation procedures from years with racial data.

[b] Based upon OCR enrollments and earned degrees by race.

Source: U.S. Department of Education, Office for Civil Rights. *Racial, Ethnic and Sex Enrollment Data from Institutions of Higher Education, Fall 1972, 1974, 1976, 1978, 1980.* U.S. Department of Education, Office for Civil Rights. *Bachelor's Degrees Conferred by Institutions of Higher Education by Race, Ethnicity and Sex: Institution, State, and Nation, 1976-77, 1978-79, 1980-81.*

racial groups there was a decline in institutional effectiveness in graduating undergraduate students. The impact of institutional retrenchment and consolidation in higher education over the period of study probably contributes to this decline. The consolidation and contraction which proved necessary during the 1970s reduced or eliminated several student support programs at both the institutional and societal levels.

The numbers in Table 3.1 also reveal a decline in the ability of black, white, and Asian undergraduates to persist in obtaining a bachelor's degree. One salient factor in persistence to an undergraduate degree is the ability to finance one's education through scholarships, not loans. Retrenchment in higher education at the societal and institutional levels reduced the volume of scholarship aid available. Students ordinarily eligible for scholarship aid were forced to turn to loans in order to finance their undergraduate education. Increasing inflation and interest rates, and a generally recessive national economy rendered loans a risky proposition for both the student and the lending institution.

One constant over the 1972-73 to 1980-81 time period is the rank order of effectiveness by racial group. That is, in each year under study, and for the entire time period under examination, undergraduate institutions were more effective in graduating Asian students than black students. In each academic year under study except for 1980-81, the effectiveness quotient (EQ) for black students was consistently less than the national norm.

Table 3.1 indicates a declining trend in persistence among black undergraduates in all four-year institutions, except for the 1978-79 academic year where there was a noticeable increase over 1976-77. However, there was a significant decrease between 1978-79 and 1980-81. The overall declining trend signals a problem in retention.

As a comparison to these EQ scores for all four-year institutions, let us examine Blackwell's (1982) figures for full-time B.S. in engineering enrollment programs for black students for all institutions and B.S. engineering degrees for black students for all institutions for 1972-73, 1974-75, 1976-77, and 1978-79.

Table 3.2: Effectiveness Quotient for B.S. in Engineering Enrollment/Earned Degrees for Black Students for Selected Years—All Institutions Combined

	(a)	(b)	(c)	(d)	(e)	(f)
Year	Total Black Student Enrollment	Percent Black of Total	Total B.S. Awarded Black Students	Percent Black of Total	Black Student EQ	All Races EQ
1972-73	5,508	3.0	657	1.5	0.12	0.22
1974-75	6,827	3.4	734	2.0	0.11	0.19
1976-77	9,828	3.8	844	2.1	0.09	0.16
1978-79	12,954	4.2	901	2.0	0.07	0.17

Source: James E. Blackwell, "Demographics of Desegregation", in *Race and Equity in Higher Education*, American Council on Education, 1982.

As Blackwell notes, black undergraduate interest in the field of engineering has expanded enormously within the past decade. As shown in Table 3.2, the absolute number of black students enrolled in engineering more than doubled between 1972 and 1978. The percent of black students enrolled in engineering increased consistently between 1972 and 1978. The total B.S. degrees awarded to black students in engineering increased by a factor of 1.4 times between 1972 and 1978. However, the EQ scores in column (e) of Table 3.2 show a steady decline. This measure indicates an increasingly serious problem of retention among black students in engineering.

This problem of retention is also reflected in the EQ scores for black students in Table 3.1. That is, Table 3.1 shows a steady decline in EQ scores, except for 1978-79. The EQ scores for black students in engineering as re-

ported in Table 3.2 are higher than for black students in all fields as reported in Table 3.1, except for 1978-79. For all races, the EQ scores for engineering students are consistently higher than the EQ scores for all fields, with the smallest deviation being in 1978-79.

Thus, for engineering and all other fields, the decade of the 70s has seen an increase in the numbers of black students enrolled and graduated. However, this seemingly positive trend is overshadowed by declining EQ scores signalling serious problems of retention. This situation suggests something akin to a "revolving door" policy by colleges and universities in relation to black students. That is, there seem to be problems in the institutional system in relation to issues of persistence on the part of black students.

Astin's 1982 educational pipeline indicates that 83 percent of whites graduate from high school while 72 percent of blacks graduate from high school. Of this number, 38 percent of whites, and 29 percent of blacks, enter college. Finally, 23 percent of whites and 12 percent of blacks complete college.

Thus, whites are 1.2 times more likely to graduate from high school than are blacks. They are 1.3 times more likely to enter college than blacks, yet are 1.9 times more likely to complete college than are blacks. The fact that whites are nearly twice as likely to complete college than are blacks suggests the importance of structural factors over individual factors.

Among the structural factors contributing to this significant difference in college completion rates is the median income of black families in relation to white families. In 1972, the median income (in 1979 dollars) for white families was $20,038, while for black families the median income was $11,909. The median income for black families in 1972 was 59 percent of the median white family income. This median family income gap of

41 percent has remained constant since 1972, increasing from an income gap of 39 percent in 1970.

Another factor is the generally higher unemployment rates of blacks in the labor force. In 1972, the white unemployment rate was 5.0 percent, while for blacks the figure was 10.0 percent. As Table 3.3 indicates, blacks in the labor force were nearly twice as likely to be unemployed than whites over the 1972-1980 time period.

Table 3.3: Annual Average Unemployment Rates by Race[a] (in percentage)

Year	White	Black and Other Races[b]	B/W Ratio[c]
1972	5.0	10.0	2.00
1974	5.0	9.9	1.98
1976	7.0	13.1	1.87
1978	5.2	11.9	2.29
1980	6.3	13.2	2.10

[a] Adapted from Unemployment Rates, by Race and Kind of Workers, Selected Years, 1950-1980, *1981-82 Fact Book for Academic Administrators*, American Council on Education, 1981, p. 41.

[b] Blacks make up over 90 percent of this category. In addition, the unemployment rate for blacks tends to be higher than other races in this category.

[c] This is ratio of black and white unemployment rates.

Source: *1981-82 Fact Book for Academic Administrators*, American Council on Education, 1981.

Black families thus have a significant median income gap in relation to whites, and black workers are significantly more likely to be unemployed than white workers. During a period of institutional retrenchment in higher education, these factors conspire to put financial pressures on the average black undergraduate such as to make it close to twice as likely that white undergraduates will complete college.

Further, private colleges and universities tend to be more effective in graduating black undergraduates than

are public institutions of higher education. However, the majority of black students are enrolled in public colleges and universities. It is significantly less expensive to attend public colleges and universities as indicated in Table 3.4. For all students, it is more than twice as expensive to attend a private college or university. This difference particularly affects black undergraduates who are less likely to have access to the resources to afford a private education. Black students are thus more likely to attend a public institution.

Table 3.4: Average Annual Student Charges, by Control of Institution, 1972-79 - 1980-81[a]

	Average Student Charges for Tuition, Fees, Room and Board[b]		Indexes for Average Student Charge (1967-68=100)		Consumer Price Index[c]
Year	Public	Private	Public	Private	
1972-73	1,458	3,038	137.0	137.8	126.5
1974-75	1,617	3,386	152.0	153.6	151.2
1976-77	1,803	3,898	169.5	180.9	172.3
1978-79	2,009	4,477	188.8	203.0	202.2
1980-81	2,584	5,608	242.9	254.3	253.3

[a] Adapted from Average Annual Student Charges, by Control of Institution, 1965-66 - 1980-81. *1981-82 Fact Book for Academic Administrators*, American Council on Education, 1981, p. 132.

[b] Tuition, required fees, room and board only. Does not include estimates for books, supplies, personal expenditures, and so forth.

[c] CPI converted to an academic year by averaging contiguous years and converting to 1967-68=100.

Source: *1981-82 Fact Book for Academic Administrators*, American Council on Education, 1981.

A comparison of TWIs, TBIs, and all institutions combined, shows that over the period 1972-73 to 1980-81, TBIs have been more effective in graduating black undergraduates than have TWIs. This comparison is derived from the institutional sampe drawn from the universe of colleges and universities in the United States. For each institution in the sample, an institutional EQ was com-

puted and compared with the national norm EQ. A plus or minus value was assigned to each institution based upon its EQ score in relation to the national norm. Table 3.5 summarizes the comparisons for each year under study.

Table 3.5: A comparison of Institutional EQ with National Norm EQ, 1972-73 - 1980-81

	All		TBIs		TWIs	
Year	N	%	N	%	N	%
1972-73[a]	+55	56	11	69	44	53
	-44	44	5	31	39	47
1974-75[a]	+52	55	10	63	42	54
	-42	45	6	37	36	46
1976-77[b]	+66	73	16	94	50	68
	-25	27	1	6	24	32
1978-79[b]	+55	58	10	67	40	54
	-39	42	5	33	34	46
1980-81[b]	+79	87	15	100	64	84
	-12	13	0	0	12	16

[a] As noted earlier, the figures for 1972-73 and 1974-75 are based on estimates of earned degrees by race for each institution, and for the aggregate.

[b] Enrollment and earned degrees data is based on U.S. Department of Education, Office for Civil Rights published figures.

Source: U.S. Department of Education, Office for Civil Rights, *Racial, Ethnic and Sex Enrollment Data From Institutions of Higher Education, Fall 1972, 1974, 1976, 1978, 1980*; U.S. Department of Education, Office for Civil Rights; *Bachelor's Degrees Conferred by Institutions of Higher Education by Race, Ethnicity and Sex: Institution, State and Nation, 1976-77, 1978-79, 1980-81.*

A closer examination of Table 3.5 indicates that in 1972-73, 69 percent of TBIs were above the national norm, while 53 percent of TWIs were above the national norm. In 1974-75, 63 percent of TBIs were above the national norm, while 54 percent of the TWIs were above the national norm. In 1976-77, 94 percent of TBIs were above the national norm, while 68 percent of TWIs were

above the national norm. In 1978-79, 67 percent of TBIs were above the national norm, while 54 percent of TWIs were above the national norm. In 1980-81, fully 100 percent of TBIs were above the national norm, while 84 percent of TWIs were above the national norm. Thus, for the decade under study, TBIs have consistently outperformed TWIs in graduating black students.

Chapter 4

MOST EFFECTIVE COLLEGES AND UNIVERSITIES

Background

This chapter examines the most effective colleges and universities in graduating black undergraduates over the period 1972-73 to 1980-81.

A top ten is created for those institutions with the highest EQ index. This ranking is analogous to the top ten for athletic teams, only the focus here is on effectiveness in graduating black undergraduates. Institutions included in this ranking must have a black student enrollment of at least fifty for the academic year under consideration.

The top ten ranking reflects all institutions in the sample of colleges and universities. A second ranking of the top five TBIs is also included. In some years there are TBIs included in the top ten of all institutions. Generally, the top ten is dominated by TWIs, and particularly by TWIs in the Northeast.

Again, these ranking are a function of an institution's score on the EQ index. The institutions included are those drawn from a representative sample of all colleges and universities in the United States for each academic year under study.

Once the top ten and top five TBIs are established, factors contributing to the effectiveness of these institutions are examined. That is, the concern is with reasons why a particular institution is effective in graduating black students. These factors are institutional in nature, and characteristics of effective institutions are identified and described. Much of this analysis is a product of a synthesis of research findings relating to persistence

among undergraduates. Persistence is seen as a function of particular institutional characteristics in conjunction with individual characteristics which work together to motivate the black student to complete the BA or BS degree. The concern with student characteristics implies that there is an ideal type black student most likely to persist to the degree.

Finally, this section examines the ten major hypotheses to be tested through the data available. All this information taken together provides a sense of those institutions that are more effective in graduating black students for each year of study and in aggregate, and the type of student most likely to succeed. The research synthesis provides reasons why some institutions are more effective, and why some students are more likely to succeed.

Academic Years 1972-73 and 1974-75

As noted earlier, detailed institutional figures by race are not fully available for 1972-73 and 1974-75. Estimation procedures are used through reverse extrapolation methods using the 1976-77 academic year as the baseline. Each of the 84TWIs and 18TBIs in the 1976-77 sample are examined using a formula taking into account changes in the state population and the ratio of black students enrolled in each institution to the percent black in the state population to arrive at adjusted figures in order to estimate the EQ score. The rankings for 1972-73 and 1974-75 should be interpreted with this caveat in mind. Only the EQ scores for 1972-1973 and 1974-1975 will be reported here. However, more weight should be accorded the 1976-77, 1978-79, and 1980-81, rankings in determining trends in institutional effectiveness.

Table 4.1: Top Ten Colleges and Universities in the Production of Black Baccalaureates, 1972-73

Institution	State	EQ
1. Dartmouth	NH	0.321
2. Simmons College	MA	0.317
3. Harvard	MA	0.286
4. Morehouse	GA	0.273
5. Yale University	CT	0.261
6. Springfield College	MA	0.252
7. Southern University	LA	0.243
8. Connecticut College	CT	0.231
9. Notre Dame	IN	0.223
10. Rice University	TX	0.217

Table 4.2: Top Five Traditionally Black Institutions in the Production of Black Baccalaureates, 1972-73

Institution	State	EQ
1. Morehouse College	GA	0.273
2. Southern University	LA	0.243
3. Fisk University	TN	0.233
4. South Carolina State	SC	0.197
5. Tuskegee Institute	AL	0.177

Source: U.S. Department of Education, Office for Civil Rights. *Racial, Ethnic and Sex Enrollment Data from Institutions of Higher Education*, Fall 1972, 1974.

Note: TWIs: N=83/TBIs: N=16

Table 4.3: Top Ten Colleges and Universities in the Production of Black Baccalaureates, 1974-75

Institution	State	EQ
1. Harvard	MA	0.279
2. Simmons College	MA	0.276
3. Dartmouth	NH	0.266
4. Yale University	CT	0.260
5. East Texas State	TX	0.248
6. Rice University	TX	0.236
7. Southern University	LA	0.229
8. Notre Dame	IN	0.223
9. Connecticut College	CT	0.221
10. Morehouse	GA	0.217

Table 4.4: Top Five Traditionally Black Institutions in the Production of Black Baccalaureates, 1974-75

Institution	State	EQ
1. Southern University	LA	0.229
2. Morehouse College	GA	0.217
3. Tuskegee Institute	AL	0.183
4. Fisk University	TN	0.181
5. Alabama A & M	AL	0.152

Source: U.S. Department of Education, Office for Civil Rights. *Enrollment Data, 1974-75.*

Note: TWIs: N=78/TBIs: N-16

Included in the top ten ranking for 1972-73 are six institutions in New England, three in Massachusetts, two in Connecticut, and one in New Hampshire. There are two TBIs in the top ten. The top ten is dominated by private, prestigious, and selective institutions. Of the top ten, six have EQ scores of .25 or above, signalling a high degree of effectiveness.

Of the TBI top five, only one has an EQ score of .25 or above. However, all those in the top five are considerably higher than the national norm EQ for black students in 1972-73 of .10. The top five TBIs also exceed the 1972-73 national norm EQ for white students, Asian students, and for the universe of students as reported in Table 3.1.

The national norm EQ score for black students declined between 1972-73 and 1974-75 from .10 to .08. This decline in effectiveness was also reflected in the scores of those institutions in the top ten and top five, as reflected in Tables 4.3 and 4.4.

Again, New England colleges and universities dominate the top ten with five institutions. Of these, two are

in Massachusetts, two in Connecticut, and one in New Hampshire. Perhaps surprisingly, Texas placed two institutions in the top ten. Morehouse remained one of two TBIs in the top ten, but took a dive from fourth to tenth place. As in 1972-73, private, prestigious, and selective institutions dominated the top ten.

Academic Years 1976-77/1978-79/1980-81

The most effective institutions for the 1976-77 academic year consist of a ranking topped by Simmons College, a private school in Boston, Massachusetts. As seen in Table 4.5, the top ten consists of six institutions in the New England states, three in Massachusetts, two in New Hampshire, and one in Connecticut. Further, private institutions dominate the top ten. There is only one TBI in the top ten.

Table 4.5: Top Ten Colleges and Universities in the Production of Black Baccalaureates, 1976-77

Institution State	EQ	Black Student Enrollment	Black Student Earned Degrees
1. Simmons College, MA	0.311	148	46
2. New Hampshire College, NH	0.305	59	18
3. Chaminade, HI	0.284	88	25
4. Dartmouth, NH	0.279	247	69
5. Springfield College, MA	0.278	133	37
6. Rice University, TX	0.260	104	27
7. Yale University, CT	0.257	245	63
8. Philander Smith, AK	0.249	450	112
9. Harvard, MA	0.243	441	107
10. Miami U, OH	0.242	219	53

Table 4.6: Top Five Traditionally Black Institutions in the Production of Black Baccalaureates, 1976-77

Institution State	EQ	Black Student Enrollment	Black Student Earned Degrees
1. Philander Smith, AK	0.249	450	112
2. Fisk University, TN	0.238	1,186	282
3. Lane College, TN	0.200	684	137
4. South Carolina State, SC	0.164	2,894	474
5. Alabama A&M, AL	0.139	2,735	379

Note: TWIs: N=74/TBIs: N=17

Table 4.7: Top Ten Colleges and Universities in the Production of Black Baccalaureates, 1978-79

Institution State	EQ	Black Student Enrollment	Black Student Earned Degrees
1. Harvard, MA	0.444	243	108
2. Athens State College, AL	0.356	73	26
3. Southern U., LA	0.337	2,681	904
4. Simmons, MA	0.289	135	39
5. Connecticut C., CT	0.278	54	15
6. Dartmouth, NH	0.270	259	70
7. CUNY-Brooklyn, NY	0.219	2,975	650
8. East Texas State, TX	0.217	921	200
9. Notre Dame, IN	0.210	167	35
10. Yale, CT	0.209	283	59

Table 4.8: Top Five Traditionally Black Institutions in the Production of Black Baccalaureates, 1978-79

Institution State	EQ	Black Student Enrollment	Black Student Earned Degrees
1. Southern U., LA	0.337	2,681	904
2. Fisk U., TN	0.202	1,074	217
3. Tuskegee Institute, AL	0.165	2,599	430
4. South Carolina State, SC	0.163	2,872	468
5. Lane College, TN	0.163	669	109

Note: TWIs:N=74/TBIs: N=17

Table 4.9: Top Ten Colleges and Universities in the Production of Black Baccalaureates, 1980-81

Institution State	EQ	Black Student Enrollment	Black Student Graduates
1. Athens State Coll., AL	0.712	52	37
2. New Hampshire Coll., NH	0.605	215	130
3. Harvard, MA	0.449	216	97
4. Simmons, MA	0.400	100	40
5. St. Mary's C., KS	0.382	55	21
6. Univ. of Miami, FL	0.267	667	178
7. Dartmouth, NH	0.258	275	71
8. St. John's, NY	0.257	622	160
9. Rice U., TX	0.227	88	20
10. East Texas State, TX	0.226	848	192

Table 4.10: Top Five Traditionally Black Institutions in the Production of Black Baccalaureates, 1980-81

Institution State	EQ	Black Student Enrollment	Black Student Earned Degrees
1. Bishop C., TX	0.201	658	132
2. South Carolina State, SC	0.176	3,084	543
3. Lane College, TN	0.141	747	105
4. Alabama A&M, AL	0.137	2,655	365
5. Florida A&M, FL	0.130	4,499	587

Source: U.S. Department of Education, Office for Civil Rights. *Enrollment and Earned Degrees Data, Institutions of Higher Education.* Race, Ethnicity and Sex. 1976-77, 1978-79, 1980-81.

Note: TWIs: N=76/TBIs: N=15

Institutions with an EQ score of .25 or above are either very effective in graduating black students or there are variations in the enrollment pattern that bear examination.

Among TBIs, Table 4.6 provides a ranking of the top five institutions in graduating black undergraduates. The institutional sample of TBIs consists of eighteen schools.

Of the TWIs, in 1976-77 seven of the top nine have EQ scores of .25 or above. Of the TBI, only Philander Smith has an EQ of .25 or above. It should be borne in mind that of those who enter college, whites are much more likely to complete the baccalaureate within the traditional four-year period than are minority students (HERI, 1982). According to the National Longitudinal Study, 34 percent of the whites, 24 percent of the blacks, 16 percent of the American Indians, and 13 percent of the Hispanics who entered college in 1972 had completed the baccalaureate degree by 1976.

The data in Tables 4.5 and 4.6 suggest that black students who attend particular types of institutions are more likely to complete the degree in four years. Looking at baccalaureate completion rates beyond the four year span, one finds that approximately 56 percent of white freshmen and 51 percent of black freshmen eventually receive the bachelor's degree. The average time of completion is five years.

In 1976-77, the top five ranking TBIs had a total black student enrollment of 7,949, of which 1,384 graduated. This compares with an enrollment of the top nine TWIs of 1,684 black students, of which 445 graduated. The EQ score for the TBI top five was 0.174 as compared with a TWI top nine score of 0.264. However, these figures suggest that TBIs are doing the job they were set up to accomplish, that is to enroll and graduate significant numbers of black students otherwise denied access to higher education, albeit, at a lower level of effectiveness than the top ranking TWIs.

In the 1978-79 academic year, Harvard College moved into the top position in terms of institutional effectiveness in the production of black baccalaureates. Harvard moved from ninth in 1976-77 to first in 1978-79. Simmons College fell from first to fourth. Again, New England private institutions dominated the top ten, with two from Massachusetts, two from Connecticut, and one in New Hampshire, as seen in Table 4.7.

Among the TBIs, Southern ranked at the top, Fisk remained second, and South Carolina State remained in fourth place. Philander Smith slipped out of the top five, while Lane College dropped from third to fifth.

Again, only one TBI had an EQ score above .25, while five of nine TWIs in the overall top ten scored above .25. The latter is a drop in the number of TWIs with an EQ score above .25 from the total of seven in 1976-77.

Among the TWIs in the top ten, Harvard saw slightly more than two in five black students enrolled graduate in 1978-79. Harvard's move to the top of the rankings between 1976-77 and 1978-79 was brought about primarily by a steep decline in black student enrollment, while the number of black graduates remained constant.

From among the top five TBIs in 1978-79, Southern saw one in three of its black student population graduate, Fisk had one in five, Tuskegee, South Carolina State and Lane all had approximately one in eight graduate.

Of those TWIs in the top ten, Yale had the lowest proportion, one in five, of those enrolled who graduated. For Yale, this represented a slip from one in four in 1976-77. However, unlike Harvard, Yale did experience a slight increase in black undergraduate enrollment. Simmons experienced a slight decline in both enrollment and in its EQ score. Dartmouth witnessed a slight increase in enrollment and a minor decrease in its EQ scores.

In 1978-79, the TBIs top five enrolled 9,895 black undergraduates and graduated 2,128 of them. Of the nine TWIs in the overall top ten, there were 5,110 black undergraduates of whom 1,202 graduated. The EQ for the TBIs top five in 1978-79 was 0.215 as compared to the top nine TWIs EQ score of 0.235. The top five TBIs saw an increase in their effectiveness score between 1976-77 and 1978-79, while the top nine TWIs witnessed a decline, thus closing the aggregate EQ score of the top institutions considerably.

The 1978-79 academic year thus saw the top ranking TBIs continue to pursue their established mission of enrolling and graduating black students. In implementing this mission, the top TBIs improved their effectiveness considerably since the 1976-77 academic year, while the top TWIs declined slightly in effectiveness.

The 1980-81 academic year saw Athens State College in Alabama move to the top position from number two in 1978-79. This change was brought on mainly by a steep reduction in enrollment along with an increase in the number of graduates. New Hampshire College climbed back into the top ten after being absent in 1978-79. The 1976-77 to 1980-81 period witnessed a radical increase in both black student enrollment and graduates at New Hampshire College.

Again, New England dominated the rankings with four institutions in the top ten. Of these institutions, two were in Massachusetts and two were in New Hampshire. In contrast to the previous two academic years, a TBI did not rank in the top ten. As Table 5.9 indicates, there was quite a range in EQ scores among the top ten institutions.

Of the top ten, eight had EQ scores of .25 or better. Harvard remained in the top ten, slipping from first to third, although its EQ score increased very slightly. However, Harvard's black student enrollment continued to decline. Simmons remained in fourth place, with an increase in its EQ, but a decrease in its enrollment. Dartmouth slipped from sixth to seventh between 1978-79 and 1980-81, yet experienced an increase in its black student enrollment.

Among the TBIs, Bishop College moved into the top position in 1980-81. South Carolina State moved from fourth place to second place, while Lane College moved from fifth to third. Not one TBI in the top five had an EQ score of .25 or above.

The aggregate EQ score for the top five TBIs slipped to 0.149 in 1980-81, while the top ten TWIs experienced

an increase in EQ scores to 0.302. Concurrently, the top five TBIs enrolled 11,643 students and graduated 1,732, while the top ten TWIs enrolled 3,138 black students and graduated 946. The TBIs continued their mission of providing access to black undergraduates, albeit, at a rate considerably less effective than the top ten TWIs, and at a rate of lesser effectiveness than in either 1976-77 or 1978-79.

Most Consistent Institutions, 1972-73 to 1980-81

In examining the trends in institutional effectiveness in the production of black baccalaureates over the 1972-73 to 1980-81 period, Table 4.11 and Table 4.12 summarize the top ten overall and the top five TBIs, respectively. The tables indicate the ranking as a function of years in the top ten and the mean rank over that period of time. The final column in each table indicates the rank, irrespective of the number of years in the top five or top ten. However, the number of years in the top ranking provides a measure of consistency in performance.

Table 4.11: Top Ten Institutions in Effectiveness, 1972-73 to 1980-81

Institution	State	Years In Top Ten	Mean Rank	Rank Controlling for Years in Top Ten
1. Simmons College[a]	MA	5	2.6	2
2. Harvard College[a]	MA	5	3.4	4
3. Dartmouth College[a]	NH	5	4.2	5
4. Yale University[a]	CT	5	6.5	7
5. Rice University[a]	TX	4	7.8	9
6. East Texas State	TX	3	3.3	3
7. Southern Univ.	LA	3	5.7	6
8. Connecticut College[a]	CT	3	7.3	8
9. Notre Dame Univ.[a]	IN	3	8.7	10
10. Athens State C.	AL	2	1.5	1

[a] Private Institutions.

Source: U.S. Department of Education, Office for Civil Rights. *Enrollment Data and Earned Degrees Data, 1972-79 to 1980-81.*

Five of the top ten institutional performers for the five academic years in the study period are located in New England, two in Massachusetts, two in Connecticut, and one in New Hampshire. There is one TBI in the top ten. Private, prestigious, and selective institutions dominate the rankings.

Turning now to the top five TBIs in terms of academic performance over the 1972-73 to 1980-81 period yields the following information.

Table 4.12: Top Five TBIs in Effectiveness, 1972-73 to 1980-81

Institution	State	Years In Top Five	Mean Rank	Rank Controlling for Years in Top Ten
1. Fisk University[a]	TN	4	2.8	2
2. South Carolina State	SC	4	3.5	3
3. Southern Univ.	LA	3	1.3	1
4. Tuskegee Institute[a]	AL	3	3.7	5
5. Lane College[a]	TN	3	3.7	5

[a] Private Institution

Source: U.S. Department of Education, Office for Civil Rights. *Enrollment Data and Earned Degrees Data, 1972-73, 1980-81.*

Fisk and South Carolina State are most consistent in that four of five academic years they were in the top five. However, Southern had the highest mean ranking, and the most appearances in the overall top ten ranking.

As rankings for each study year and the aggregate indicate, the 90th percentile is dominated by TWIs which are private, prestigious, and selective. The TBIs are clustered from the 75th to 90th percentile, while the bulk of TWIs are below the 75th percentile. This implies that TBIs are generally more consistent performers in terms of institutional effectiveness in the production of black baccalaureates than are TWIs.

Salient Factors and Institutional Characteristics

The research review identified the most salient factors in persistence to a baccalaureate degree among black students. The author made note of the sample size, the statistical results, and the p value, in determining those factors which seem to have the most impact on persistence and institutional effectiveness. A shortcoming in this regard is that for each available study, the mean, standard deviation, and reliability of each variable was not published (Hunter, Schmidt, and Jackson, 1982).

In addition, all of the studies utilized are published in one form or another. Light (1982) reminds us that there is a publication bias. That is, several scientists have speculated that research findings of a relationship between variables that do not reach statistical significance are less likely, all other things equal, to be accepted for publication. Greenwald (1975) conducted a survey to determine if such speculation is grounded in fact. He surveyed both authors and reviewers of articles submitted to the *Journal of Personality and Social Psychology*. He found that researchers carrying out a study predict that their data will lead them to reject their null hypothesis. This is true 80 percent of the time. A second is that if a study leads to rejecting the null hypothesis of no treatment effect or no relationship between variables, researchers are more than eight times as likely to immediately submit their results for journal publication than if their study does not lead to rejection of the null hypothesis. A third is that if the findings from the first test of an hypothesis do not allow rejection of the null hypothesis, the average researcher is more than four times as likely to simply give up the problem than if the first findings allow the null hypothesis' rejection.

Overall, these survey results were very consistent between authors and reviewers. The results make a strong case to support the notion of a publication bias that reviewers need to keep in mind. A further caveat in the

research review conducted for this study on persistence and institutional effectiveness is that given time and budget constraints, the author selected only statistically significant findings in the published work.

Correlational studies served as the initial focal point for the 'modified' meta-analysis conducted by the author. Attention was paid to correlations and their p value ($p \leq .05$) in identifying salient factors. Next, factor analytic techniques were used to group the independent variables. Factor analysis of the salient independent variables yielded three categories of factors. These categories are defined as Institutional, Individual, and Contextual. Table 4.13 identifies these three categories, and also defines the factors in terms of their malleability.

Table 4.13: Most Salient factors in Persistence to the Baccalaureate Degree

FACTOR	
Institutional	Individual
1. Prestige	1. Female
2. Selectivity[a]	2. Parental Aid, TWI
3. Per-Student Expenditure[a]	3. High Socio-Economic Status[a]
4. Tuition[a]	4. Good H.S. Grades[a]
5. Traditionally Black Institution	5. Do Well on SAT, ACT[a]
6. Scholarships, Grants[a]	6. Good Study Habits[a]
7. Four-Year College	7. Live in Dormitory[a]
8. Size	8. Involvement[a]
9. Access[a]	
10. % Black Faculty[a]	
11. Private	
Contextual	
1. Northeast Region	
2. Attended Integrated High School[a]	
3. Litigation Status	

[a] Malleable

Source: Synthesis of research studies reported on in 'Research Review' chapter.

Of the eleven salient factors in the Institutional category, six are seen to have some degree of malleability. In the Individual category, of the eight salient factors, five are seen to have some degree of malleability. Of the three salient Contextual factors, one is seen to have some degree of malleability. Following Etzioni (1971), malleability refers to the degree to which the phenomenon a variable characterizes is "moveable". From a policy viewpoint, some variables are "given" or extremely difficult to change (sex), while others are relatively more changeable (income).

Next, in order to ascertain a possible relationship between the criterion of effectiveness, as measured by the EQ, and the predictor variables, a decision was made to test these relationships by computing Pearsonian correlations for the aggregate EQ for the five study years. These correlations were computed by the categories as delineated in the factor and the analytic technique described above. Table 4.14 provides the correlations for the Institutional category, Table 4.15 for the Contextual category, and Table 4.16 for the Individual category.

According to Table 4.14, the most powerful institutional predictors of institutional effectiveness for all years combined is attending a four-year college, followed by attending a TBI, access of black students to the institution, whether the student was supported by scholarships or grants, and the percent black faculty.

Reviewing Table 4.15, the most powerful contextual predictors of institutional effectiveness for all years combined are attending college in the Northeast and litigation status. These findings suggest that degree completion is more probable by attending college in the Northeast or a TBI in an Adams state.

According to Table 4.16, the most powerful individual predictors of institutional effectiveness for all years combined are involvement in campus life, good high school grades, parental aid for those attending TWIs, living in a dormitory, and high SES.

Table 4.14: Pearsonian Correlations of Effectiveness Quotient with Institutional Predictors—All Years Combined

Year	Variables[b]										
Criterion	Prestige	Selectivity	Per-Student Exp.	Tuition	TBI	Scholarship Grants	Four-Yr College	Size	Access	% Blk Fac	Private
EQ[a] Combined	.12	.14	.16	.07	.21	.18	.23	.14	.20	.17	.16
$p \leq .05$											

[a] EQ combined for 276 institutions for 1976-77, 1978-79, 1980-81.
[b] Variables derived from synthesis of 31 research studies.

Table 4.15: Pearsonian Correlations of Effectiveness Quotient With Contextual Predictors—All Years Combined

Year	Variables[b]		
Criterion	Northeast Region	Attended Integrated High School	Litigation Status
EQ[a] Combined	.36	.11	.24
$p \leq .05$			

[a] EQ combined for 276 institutions for 1976-77, 1978-79, 1980-81.
[b] Variables derived from synthesis of 31 research studies.

Table 4.16: Pearsonian Correlations of Effectiveness Quotient with Individual Predictors—All Years Combined

Year	Variables[b]							
Criterion	Female	Parental Aid, TWI	High SES	Good High School Grades	Do Well on SAT, ACT	Good Study Habits	Live in Dorm	Involvement
EQ[a] Combined	.21	.26	.24	.30	.14	.22	.25	.33
$p \leq .05$								

[a] EQ combined for 276 institutions for 1976-77, 1978-79, 1980-81.

[b] Variables derived from synthesis of 31 research studies.

For exploratory purposes, a stepwise regression method was employed in an attempt to isolate the most powerful set of predictors of institutional effectiveness in the production of baccalaureates. The observations made regarding the power of predictor variables should be regarded as primarily heuristic. The stepwise regression looked at the strongest factors by combining the institutional, individual, and contextual predictors. For all years combined, this analysis indicates that the most important predictor for institutional effectiveness is a contextual factor, that of attending school in the Northeast. An individual factor, involvement, also appeared, followed by good high school grades, and parental aid (TWIs). Institutional predictors of four-year college and attending a TBI also appeared, but they generally followed individual factors. For all salient predictors in the regression analysis, $p \leq .05$.

Next, a modified meta-analysis using effect sizes was conducted. If the null hypothesis is true, then the population correlation or effect size is in fact zero. If sample sizes are known for all studies, then the effect size can be estimated from either the proportion of positive results or from the proportion of positive significant results. Glass (1976) advances systematic quantitative procedures for integrating research findings across studies. The primary properties of Glass's meta-analysis are a strong emphasis on effect sizes rather than significance levels. Glass's argument is that research integration is more descriptive than inferential, and that the most important descriptive statistics are those that indicate clearly the magnitude of effects.

The initial product of Glassian meta-analysis is the mean and standard deviation of effect sizes across studies. His method also entails acceptance of the variance of effect sizes at face value. In essence then, the effect size is the difference between the means in standard score

form, that is, the ratio of the difference between the means to the standard deviation.

In an exploratory fashion, correlation coefficients across the relevant studies were combined. A caveat here is that consideration of only studies with statistically significant findings can lead to bias in the estimate of correlations or effect sizes. Another problem in combining evidence from different studies in the behavioral and social sciences is that there is usually no natural scale of measurement for social variables (Hedges and Olkin, 1983). Glass's suggestion of using the standardized mean difference and the correlation coefficient as the two most useful indices for behavioral and social sciences helps somewhat in analysis. However, some investigators have argued that this procedure may obscure real differences in the outcomes of studies conducted under different conditions.

In sum, the use of correlation coefficients as the index indicated the importance of region as a contextual effect, attending a four-year college, a private college, and TBI as institutional effects, and good high school grades, and high SES as individual effects. Again, the use of this modified meta-analysis should be regarded as exploratory and heuristic. However, it does provide some guidance as to the most salient predictors of persistence and institutional effectiveness.

Table 4.17 summarizes the research review in which effect sizes are determined for those factors found to be most salient in institutional effectiveness in the production of black baccalaureates. The magnitude of the effect size can also be used as a way to rank the factors in their order of importance. By both ranking the salient factors and determining their relative degree of malleability, a meaningful step can be taken in the direction of formulating policy objectives with the intended goal of addressing institutional effectiveness.

Table 4.17: Meta-Analysis

Factors	Effect Size M	SD	N
Institutional			
Attend 4-Year College	.41	.76	26
Attend a TBI	.45	.81	21
Access	.15	.48	9
Scholarship Aid	.27	.72	17
Percent Black Faculty	.31	.73	15
Attend Private College	.47	.86	23
Contextual			
Attend College in Northeast	.54	.91	11
Litigation Status	.42	.46	7
Individual			
Involvement	.31	.68	16
Good High School Grades	.51	.90	15
Parental Aid (TWIs)	.19	.39	17
Living in Dormitory	.30	.72	17
High SES	.42	.89	15

Note: M=Effect Size; SD=Standard Deviation; N=No. of Studies.

In rank order, the factors contributing the most to producing black graduates are attending college in the Northeast, good high school grades, attending a private college, attending a TBI, high SES, and attending a 4-year college.

Taking into account the foregoing analysis, the most consistent institutions in the production of baccalaureates over the 1972-73 to 1980-81 can be evaluated in terms of characteristics which enhance effectiveness. For all institutions that are most effective, half are in the Northeast, seven of ten are private, the majority charge tuition and fees over the average, all are residential rather than commuter institutions, four are in *Adams* states, only two are weak in terms of access, the majority have student populations of more than 500 and less than 10,000 most are prestigious and selective, with generous per student expenditures.

Among the top five TBIs over the study period, as expected all are in *Adams* states, three are private, two are considered prestigious and selective, all have student populations above 500 but less than 10,000, all have equal access for black students, and there is a majority of black faculty in each.

A review of the characteristics of the most effective institutions over the study period reveals a close correspondence between effectiveness and persistence predictors as reported in the statistical analysis. These findings are revealing and suggestive. The exploratory nature of this study should encourage others to examine the relationship between persistence and institutional effectiveness.

Type of Student Most Likely to Succeed

In this vein, the individual predictors, or factors, help shed light on the type of black student most likely to persist to degree completion. The foregoing analysis identifies such a student as possessing the following attributes: being a female, receiving parental aid (particularly those attending TWIs), being of high socio-economic status, having good high school grades, doing well on aptitude tests (such as SAT or ACT), possessing good study habits, living in dormitory (especially during the first year), and maintaining a high level of involvement with campus life.

Not possessing a majority of these factors does not imply failure. The TBIs have traditionally enrolled students not in possession of the majority of these factors. However, for many not in possession of a majority of these factors, the college experience has allowed them to excel and to acquire a critical number of these individual characteristics. The ongoing value of the TBIs is their ability to admit, retain, and graduate students who do not meet the ideal criteria noted above. A weakness in the TWIs, is that oftentimes black students not in possession

of a majority of these individual characteristics fall by the wayside.

Results of Tests

Ten specific hypotheses were stated earlier. The analysis of the data presented in various forms in Chapters 3 and 4 allows the author to summarize the acceptance or rejection of the hypotheses at this point. Again, the acceptance or rejection of each null hypothesis should be considered tentative.

Hypotheses

1. There is no difference in effectiveness between TBIs and TWIs.

   Finding: Reject. TBI > TWI

2. There is no difference in effectiveness between public and private colleges and universities.

   Finding: Reject. Private > Public

3. There is no difference in effectiveness between public TBIs and private TBIs.

   Finding: Reject. Private TBI > Public TBI

4. There is no difference in the percent of black faculty between colleges and universities that are more effective in graduating black students than those that are less effective.

   Finding: Reject. Larger % of black faculty => higher EQ score

5. There is no difference between more effective and less effective institutions in the likelihood of having special admissions programs.

   Finding: Reject. More effective more likely

6. There is no difference between more effective and less effective institutions in the likelihood of having a retention program.

   Finding: Reject. More effective more likely

7. There is no difference between more effective and less effective institutions in the quality of financial aid.

   Findings: Reject. More effective more likely.

8. SAT scores do not have a significant relationship to institutional effectiveness.

   Finding: Accept.

9. Student-faculty ratios have no relationship to institutional effectiveness.

   Finding: Accept.

10. Per student expenditures have no relationship to institutional effectiveness.

    Finding: Reject. Higher per student => more effective.

Of the ten null hypotheses, eight were rejected. The rejection of these null hypotheses leads us to believe that: (1) TBIs are more effective than TWIs in producing black baccalaureates; (2) private institutions are more effective than public institutions; (3) private TBIs are more effective than public TBIs; (4) institutions with a larger percentage of black faculty are more effective; (5) institutions with special admissions programs are more effective; (6) institutions with retention programs are more effective; (7) more effective institutions are more likely to have a higher quality of financial aid; and (8) institutions with higher per-student expenditures are more effective in producing black baccalaureates.

Chapter 5

POLICY IMPLICATIONS

For the foreseeable future, colleges and universities in the United States will be operating on the principle of little or no real growth. For many, survival will be the critical issue. Financial constraints and financial stress will serve as basic operational principles for higher education. This situation is particularly real for predominantly black institutions of higher education, witness the recent well publicized problems of Fisk University.

Colleges and universities under financial stress are most successful when they recognize the need for more effective resource use, promote long-range planning, identify priority programs and trim others, attract capable managers, improve fund-raising, and require greater trustee, faculty, and staff involvement (Campbell, 1982; Dickmeyer and Hughes, 1982). Policy-makers in predominantly black institutions often times find it difficult to engage in long-range planning when short-range problems dominate the agenda. Another problem for TBIs is that TWIs are often able to recruit more capable black managers due to higher salary schedules and other employment benefits.

The study reported here has attempted to conceptualize institutional effectiveness and to measure this phenomenon in relation to factors identified as salient in persistence to the degree on the part of black students. The statistical techniques represent an attempt to identify and rank the most salient factors in terms of their impact. Those variables, predictors or factors considered malleable were identified. Statistical and meta-analysis served to isolate effect sizes of the more malleable factors, thus ranking them. As Etzioni (1971) reminds us, the ranking of factors in terms of their malleability is important in itself. However, a general theory of malle-

ability is central to policy science. For policy studies should focus attention and research on the more moveable variables and on the conditions under which less movable ones can become more open to modification.

In this context, a concern is also what makes for an effective undergraduate institution in relation to producing black graduates? As seen earlier, factors contributing to institutional effectiveness can be classified as institutional, individual, and contextual. The methods employed in this research should allow for formulating a reasonable answer to this question. The policy implications suggested by both the societal and institutional analyses should be couched within a context of non-expansion in higher education.

Among the institutional factors, malleable variables include access, scholarships, grants, percent black faculty, per-student expenditure, selectivity, and tuition. From a policy viewpoint, knowledge, commitments, decisionmaking strategies, and power should continue to be devoted to increasing the access of black students to higher education, supported adequately by scholarships and grants, in institutions with a reasonable percentage of black faculty and adequate per-student expenditures.

The policy of the Reagan Administration is hampering the access of black students to higher education, and the progress of traditionally black institutions. Because of new regulations it will be considerably more difficult for many black and low income college students to continue their education, as well as for high school students to enter college. In addition, the Reagan Administration does not seem inclined to support the established guidelines for dismantling dual systems of higher education as mandated in Judge John Pratt's orders with respect to the *Adams* v. *Califano* case (Blackwell and Hart, 1982).

Among individual factors, the malleable variables in rank order include involvement, good high school grades,

living in a dormitory, high socio-economic status, good study habits, and good SAT, ACT scores. At the individual level, these findings imply structures that can encourage black students to become involved on both black and white campuses, to achieve academically in high school, to develop good study habits, and to perform well on aptitude tests. Socio-economic status is important in that higher SES black students tend to outperform lower SES black students. However, the overall median black family income has remained only around half that of the median white family income. This factor is malleable, however, it has become a difficult policy outcome to achieve given chronically higher rates of black unemployment and underemployment in the U.S. economy.

Among the contextual factors, attending an integrated high school is the single malleable variable. The *Brown* v. *Board of Education* decision has been the guiding legal framework for the 30 year policy debate and action in relation to desegregation and integration in education. Again, this factor is malleable, but it has proven to be a tough policy outcome to achieve.

Traditionally black institutions remain important in terms of providing access to higher education in an effective and efficient manner to tens of thousands of black students. Outside of private, four-year colleges located in the Northeast, TBIs remain, as a group, the most effective institutional type in producing black graduates. However, compared to the private, four-year Northeastern colleges, the TBIs graduate a significantly larger number of black students per year.

The broad issues discussed here suggest a need to develop and implement policies that can strengthen the education of black students at the elementary and secondary levels in order to allow them to prepare adequately for college as a post-high school option. At least eight commissioned reports have been issued recently on the broad

topic of how to improve elementary and secondary education in the U.S. This attention to the topic of elementary and secondary education is healthy. It implies an opening of the discussion as a policy question. More commitment, decision-making strategies, knowledge and power may be directed to the topic. A concern with improving elementary and secondary education stands to benefit black people at all levels of education.

A caveat in regards to making improvements in elementary, secondary, and higher education is in regard to projections for occupational gains and losses in the 1980s. The Bureau of Labor Statistics points to a projected loss in the 1980-1990 decade of 55,000 jobs for college and university teachers. This projected job reduction compares to a loss of 173,000 jobs for secondary-school teachers.

Retrenchment is with us for this decade at least. Professional and teaching ideals in the academy are going to be tested. Morale is declining, primarily due to feelings of exclusion, rather than for economic reasons. At the same time, the faculty is becoming more sensitive to the needs of undergraduates and the surrounding community.

The task of improving access to, and the performance level of, higher education will continue to be a difficult agenda item during the 1980's. This report is an attempt to identify, describe, and measure the most salient and malleable factors in persistence among black students, and to prescribe broad approaches for improving institutional effectiveness.

Colleges and universities are going to be seeing many more non-traditional undergraduate students. They will be older, more experienced, and a different type of undergraduate than many institutions are accustomed to. Facutly members are going to be doing more inter-disciplinary collaboration than many of them may be accustomed

to. Many faculty members will be spending more and more time outside of the academy.

The decade of the 1980's is going to be a time of turmoil and change for colleges and universities. The ideals of the profession are changing. Teaching ideals are changing. Continued knowledge, commitment, decision-making strategies, and power need to be applied to improving the access of black students to undergraduate education, and the effectiveness of institutions in graduating them, in spite of the difficult environment attendant to the higher education enterprise.

[Reference Materials Omitted in Printing]

ABOUT THE AUTHOR

Philip S. Hart currently is an Associate Professor of Sociology, College of Public and Community Service, University of Massachusetts-Boston, and a Visiting Research Sociologist, Center for AfroAmerican Studies at UCLA. He holds an M.A. and Ph.D in Sociology from Michigan State University and a B.A. from the University of Colorado-Boulder.

Hart has authored numerous articles, reports, research monographs, and two books. He also has a strong background in communications. He has produced several films which have been distributed widely. He also has served as a research consultant in studies of minorities in public broadcasting and television audience measurement. He has served as project director in many urban development programs specializing in work that affects the lives of inner-city residents.

[*Ed. Note*: The following affidavit was appended to the Southern University Board of Supervisors' motion for a stay in the district court pending post-trial motions and appeal.]

EXHIBIT C

AFFIDAVIT OF RUDY GORRELL STUDENT, SOUTHERN UNIVERSITY LAW CENTER

Rudy Gorrell, being duly sworn, deposes and says:

1. I am a third year student at the Southern University Law Center. This affidavit is submitted in support of Southern University Board of Supervisors' application to stay the enforcement of the judgment entered heretofore pending the hearing and determination of the Board's appeal to the United States Supreme Court or to such other court as may be appropriate.

2. I decided to pursue my legal training at Southern University Law Center because I felt it would afford me an unparralleled opportunity to obtain a law degree in an environment which was sensitive to my concerns, while at the same time challenging and stimulating enough to insure me a quality education.

My decision to attend the Southern University Law Center was a conscious, affirmative and considered decision, made to the exclusion of all other possibilities.

4. I did not and do not wish to attend the Louisiana State University Law Center. I do not know if I would gain admission to the LSU Law Center under its current admission standards. However, I do desire to become a practicing attorney.

5. If the court's order is allowed to take effect within the ordinary delays permitted by law, my studies at the Southern University Law School will be adversely affected

as I will be most concerned about the future of the school at which I am currently enrolled. I also fear that with the elimination of the Southern University Board of Supervisors, there will be no entity that can protect and advocate the interests of students like me.

6. I think it is necessary for this Court to stay the enforcement of the district court's order pending a decision on appeal so that I and other students enrolled at the Southern University Law Center may complete our studies for the upcoming academic year without the cloud of uncertainty hanging over our law school.

/s/ Rudy Gorrell

/s/ [Illegible]
Notary Public

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION NO. 80-3300
Section "A"

UNITED STATES OF AMERICA

v.

STATE OF LOUISIANA

[Filed August 10, 1987]

NOTICE OF APPEAL TO THE SURPREME COURT OF THE UNITED STATES

Notice is hereby given that the State of Louisiana ex rel. William J. Guste, Jr., Attorney General of the State of Louisiana, a defendant herein, hereby appeals to the Supreme Court of the United States from the final orders of the United States District Court, Eastern District of Louisiana (Three-Judge Panel) invalidating and enjoining the enforcement of several constitutional and statutory provisions of the State of Louisiana with respect to the establishment and operation of four boards of higher education, abolishing said boards, and substituting in their place a court-created single governing board of higher education and further ordering the restraining of the entire system of higher education existing in Louisiana, including, but not limited to, abolishing and merg-

ing institutions, creating a community/junior college system, restricting degrees awardable by institutions of higher learning, and establishing new, stricter, and more selective admission standards at certain four-year universities, all contrary to several constitutional and statutory provisions of the State of Louisiana, such final orders having been entered on July 19, 1989, and August 4, 1989, together with the interlocutory order entered on August 2, 1988 and orders of August 4, 1989 supplementing the above final orders, denying motions for a new trial, and denying motions for a stay pending appeal.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted:

/s/ William J. Guste, Jr.
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CERTIFICATE OF SERVICE

I, William J. Guste, Jr., attorney for State of Louisiana ex rel. William J. Guste, Jr., Attorney General of the State of Louisiana, appellant herein, and a member of the Bar of the Supreme Court of the United States and of the Bar of the United States District Court in and for the Eastern District of Louisiana, hereby certifies that, on the 10th day of August, 1989, I served copies of the foregoing Notice of Appeal on the several parties herein, as follows:

1. On the United States, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to John Voltz, United States Attorney in and for the Eastern District of Louisiana, 500 Camp Street, New Orleans, Louisiana 70130, to Mr. Levern M. Younger, Attorney for the U. S. Department of Justice, Civil Rights Division, Educational Opportunities Litigation Section, P. O. Box 65958, Washington, D. C. 20035-5958, to Mr. Nathaniel Douglas and Mr. Franz Marshall, Attorneys for the U. S. Department of Justice, Civil Rights Division, Educational Opportunities Litigation Section, Washington, D. C. 20530, and to The Solicitor General, U. S. Department of Justice, Washington, D. C. 20530.

2. On Southern University Board of Supervisors, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to William Jefferson, Esq., JEFFERSON, BRIAN and GRAY, 650 Poydras Street, Suite 1850, New Orleans, Louisiana 70130.

3. On Board of Trustees for State Colleges and Universities, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to Robert Kutcher, Esq., BRONFIN, HELLER, STEINBERG AND BERINS, 650 Poydras Street, Suite 2500, New Orleans, Louisiana 70130.

4. On Board of Supervisors for Louisiana State University and A. & M. College, by mailing a copy, in a duly

addressed envelope, with first class postage prepaid, to W. S. McKenzie, Esq., TAYLOR, PORTER, BROOKS AND PHILLIPS, 451 Florida Boulevard, Baton Rouge, Louisiana 70801.

5. On Grambling State University Alumni Association, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to Thomas N. Todd, Esq., 1 North LaSalle Street, Suite 2250, Chicago, Illinois 60602.

6. On Board of Regents, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to Margaret Woodward, Esq., 610 Poydras Street, Suite 318, New Orleans, Louisiana 70130.

7. On Bossier Community College, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to Henry N. Brown, Jr., Esq., Bossier Parish Courthouse, Room 403, Burt Boulevard, Benton, Louisiana 71066.

7. On John N. Kennedy, Special Counsel to the Governor, Office of the Governor, Fourth Floor, State Capitol, P. O. Box 94004, Baton Rouge, Louisiana 70804, and to Joseph J. Levin, Jr., and Carla Calobrisi, ADAMS, McCULLOUGH & BEARD, Attorneys at Law, 200 M. Street, N.W., Washington, D. C. 20036-3307, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to said persons at said addresses.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

SOUTHERN UNIVERSITY BOARD OF SUPERVISORS,
Appellant

v.

UNITED STATES OF AMERICA,
Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that the Southern University Board of Supervisors hereby appeals to the Supreme Court of the United States from the final judgments of the Three-Judge District Court granting judgment in favor of the United States of America, entered on August 2, 1988, July 19, 1989 and August 4, 1989.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on the following counsel of record properly addressed by depositing same in the United States mail with sufficient postage prepaid on this 14th day of August, 1989.

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